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COMMANDER'S HANDBOOK

A TOOL KIT

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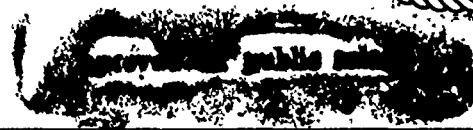
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FOR PREVENTION OF

SEXUAL HARASSMENT



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DEPARTMENT OF THE NAVY

CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

IN REPLY REFER TO
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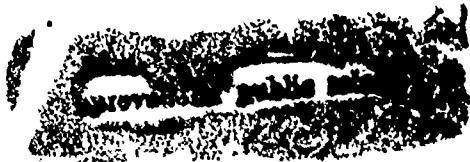
MEMORANDUM FOR COMMANDERS, COMMANDING OFFICERS, OFFICERS IN CHARGE, AND CIVILIAN HEADS OF NAVY ACTIVITIES

Subj: COMMANDER'S HANDBOOK FOR PREVENTION OF SEXUAL HARASSMENT

Ref: (a) SECNAVINST 5300.26B

1. Promulgation of reference (a) on 6 Jan 93 represented a total Navy commitment to eliminate sexual harassment via an aggressive, multi-faceted, all-hands' effort.
2. SECNAV rightly recognized that sound leadership is the cornerstone of this effort and charged commanders and supervisors with responsibility for setting the example in treating all people with mutual respect and dignity, fostering a climate free of all forms of unlawful discrimination, and preventing sexual harassment. Navy leaders are obligated not to ignore or condone sexual harassment in any form, and they must take whatever action is required to ensure that a recipient of sexual harassment is not subsequently also the victim of reprisal or retaliation. These responsibilities are part of the broader responsibility of commanders and supervisors to foster a positive climate and take appropriate corrective action when conduct is disruptive, provoking, discriminatory, or otherwise unprofessional. I expect your personal involvement in meeting these responsibilities and know that I can count on your best efforts.
3. Per SECNAV direction, this Handbook has been developed as a resource to assist you in preventing sexual harassment at your activity, and to provide sufficient references and guidance to enable you to appropriately and effectively deal with such sexual harassment complaints as may occur. (This Handbook does not, however, establish any additional rights or entitlements for individuals.)
4. Your suggestions for improving this Handbook are welcomed and should be forwarded to the Chief of Naval Personnel (PERS-6), Washington, DC 20370-5000.

F. B. Kelso Jr.
F. B. KELSO, II
Admiral, U. S. Navy



ERRATA FOR RECIPIENTS OF THE COMMANDER'S HANDBOOK FOR PREVENTION OF SEXUAL HARASSMENT

1. In order to provide a convenient "one-stop" ready reference, this Handbook anticipates that certain important, separately-issued materials will be annexed as appendices.
2. In order to assemble a complete copy of this Handbook, please therefore insert copies of the following materials (all of which should be readily available at all commands) in the Handbook as the appendices hereafter indicated--

Appendix Insert the following

- A SECNAVINST 5300.26B, Department of the Navy (DON)
Policy on Sexual Harassment
- B OPNAVINST 5370.2A, Navy Fraternization Policy
- F Informal Resolution System (IRS) Skills Booklet--"Resolving
Conflict . . . Following the Light of Personal Behavior,"
NAVPERS 15620, SN 0500LP5430900 (may be ordered via
normal supply channels from Navy Aviation Supply Office
(ASO 1013), 700 Robbins Avenue, Philadelphia, PA,
19111-5098 (phone (215) 697-2626/2997 or DSN 442-
2626/2997))
- H Schedule of Offenses and Recommended Remedies,
appendix B to enclosure (1) of OCPMINST 12752.1 (w/
Ch-1) (Discipline and Adverse Actions (CPI 752-B))

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Chapter 1

EXECUTIVE SUMMARY

This Handbook is designed for reference by commanders, commanding officers, and civilian activity heads. It highlights Navy's policies and regulations on sexual harassment and related issues. The following Executive Summary provides an abbreviated description of the information contained in this Handbook (but is no substitute for a thorough review of pertinent materials).

Chapter 2. Policy/responsibilities/definitions

- Summarizes provisions of SECNAVINST 5300.26B, Department of the Navy (DON) Policy on Sexual Harassment, relative to identification, prevention, and elimination of sexual harassment.

- Highlights individual responsibilities/accountability and DON regulations applicable to all military and civilian personnel which prohibit sexual harassment, reprisals, condonation by superiors or supervisors, or knowingly false accusations.

- Discusses definitions pertinent to sexual harassment, outlines the red-yellow-green behavior zone model, reviews other sometimes-related inappropriate conduct such as fraternization and standards of conduct. (Just because it's not sexual harassment, doesn't necessarily mean it's OK.)

- Related appendices include--

- Appendix A (copy of SECNAVINST 5300.26B)
- Appendix B (copy of OPNAVINST 5370.2A)
- Appendix C (copy of NAVREGS 1165, 1166)
- Appendix F (Informal Resolution System (IRS) skills booklet)
- Appendix H (OCPM Schedule of Offenses and Recommended Remedies)
- Appendix I (charging sexual harassment under the UCMJ)
- Appendix J (bibliography of references related to sexual harassment)
- Appendix K (IRS case studies)
- Appendix L (Fleet Case Studies)

Chapter 3. The key: establish a positive command/activity climate ("An ounce of prevention . . .")

- Leadership has a crucial role in eliminating all forms of unlawful discrimination, fostering a positive command climate, disseminating clear command policy, and creating and nurturing the processes to implement it.

- Discusses integration of sexual harassment prevention within a comprehensive EO/EEO program and reviews pertinent responsibilities in such areas as--

- Internal command communications
- Training/education
- CMO
- Assignments/opportunities/advancements
- FITREPS/EVALS/Performance ratings
- Awards/recognition
- Public affairs

- CO/activity head must identify, evaluate, correct unacceptable practices. Take (or support) prompt, decisive, and appropriate corrective action when infractions occur. Use care and judgment in deciding upon the procedures by which complaints can be most effectively investigated, reviewed, and acted upon. Seek to resolve indications of sexual harassment at the lowest appropriate level. Do not get involved when conflict is being resolved by those directly involved. Intervene when necessary. Establish and enforce command procedures to ensure that a recipient of sexual harassment is not subsequently also the victim of reprisal or retaliation.

- Related appendices include--

- Appendix D (sample command policy statement)
- Appendix E (sample POD/POW notes)
- Appendix G (Training Information Resource (TIR) bibliography)
- Appendix J (bibliography of references related to sexual harassment)

Chapter 4. Roadmap for handling sexual harassment complaints

- No CO/OIC/activity head can ever ignore evidence of inappropriate conduct of which he/she becomes aware. Upon becoming aware of harassing conduct, it is mandatory for proper authority (ordinarily the immediate CO/OIC/activity head) to take immediate action to determine what disposition should be made thereof in the interests of justice and discipline. Disposition must be accomplished with sensitivity and based upon an investigation sufficient for an intelligent decision. The nature of the investigation will depend upon the particular facts and circumstances.

- Avoid re-victimizing complainants (and witnesses). Provide/obtain/offer counseling support or referral services from the outset, continually monitor, and provide follow-up services as needed. Comply with any specific requirements pertinent to crime victims and witnesses.

- Other preliminary considerations--

- Special Incident Report?
- Major criminal offense requiring deferring command action to NCIS?

- Recommend/ratify use of the Informal Resolution System (IRS)?
- What further investigation is indicated?

- Command inquiry: Purely military offenses and very minor offenses and civilian employees' misconduct normally are investigated by a person assigned to the local command. There are no set procedures or forms for preliminary inquiries, and procedures should be tailored to suit the particular requirements of an individual command. The overall conduct of the investigation should be both thorough and impartial. Appendix M contains detailed guidelines for command investigations of sexual harassment complaints. Although directed to the investigator, appendix M can also be useful to the CO/OIC/activity head as a checklist in directing an investigation, evaluating its adequacy, formulating conclusions, and assessing options.

- Upon completion of an adequate inquiry, the CO/OIC/activity head must ensure disposition occurs in a timely fashion and at the lowest appropriate level. Options for disposition span the spectrum from a considered decision to take no action on groundless complaints (following appropriate investigation) through administrative sanctions to NJP/court-martial for military offenders or referral for criminal prosecution of civilians--

- Chapter 7 reviews disposition options for civilian offenders.
- Chapter 8 reviews disposition options for military offenders.

- Document facts, decisions, and actions in command records and individual personnel records.

- Protect individual privacy through all stages of the process.

- Provide feedback within a reasonable time to all affected individuals consistent with the requirements of the Privacy Act and other pertinent laws, regulations, and negotiated agreements.

- Make sure your people understand what reprisal is and make it unquestionably clear that it's unlawful and will not be tolerated. Ensure the complainant knows how and to whom to report any suspected instances of reprisal. Actively follow complainant's performance/evaluation. Assign a personal advocate for the complainant.

- It is just as much an offense to knowingly make a false complaint of sexual harassment, but it is not a violation to make even a baseless complaint in good faith. CO's/activity heads should proceed most cautiously when considering disciplinary action for a false complaint, since there can be a real risk that the command action could be seen as a reprisal.

- Make any required statistical reports for the sexual harassment complaint tracking system.
- Consider/implement command improvements based on lessons learned.
- Related appendices include--
 - Appendix F (Informal Resolution System (IRS) skills booklet)
 - Appendix K (IRS case studies)
 - Appendix L (Fleet Case Studies)
 - Appendix M (guidelines for command investigator)

Chapter 5. Avenues for redress/support services

- SECNAVINST 5300.26B requires that individuals who believe that they have been sexually harassed will be afforded multiple avenues to seek resolution and redress and that all personnel will be made aware of available avenues of resolution and redress.
- Redress/support services available to all personnel include the DON Sexual Harassment Advice Line, Informal Resolution System (IRS), authorized command forums, other local resources, formal complaint to command, and communications with Inspectors-General.
- Additional redress/support available to military personnel include the informal grievance/request mast with CO/OIC, Article 138 complaint, redress of wrong committed by a superior, and individual communications with Congress.
- Additional redress/support available to civilian personnel include the administrative grievance, negotiated grievance procedure (NGP), discrimination complaint procedure, appeal to Merit Systems Protection Board (MSPB), Civilian Employee Assistance Program (CEAP), possible management support services for offending persons, and communications with Congress.
- Special considerations pertain for crime victims and witnesses to ensure compliance with applicable guidance to protect, assist, and support; help mitigate any physical, psychological, and financial hardships which they might suffer; and provide access to appropriate counselling and advice as to rights.

- Related appendices include--
 - Appendix E (sample POD/POW notes)
 - Appendix F (Informal Resolution System (IRS) skills booklet)
 - Appendix K (IRS case studies)
 - Appendix L (Fleet Case Studies)

Chapter 6. Informal Resolution System (IRS)

- Summarizes the IRS' development at SECNAV direction to resolve conflict at lowest possible level (without precluding concurrent use of formal resolution options). Reviews IRS' elements, individual roles and responsibilities not to ignore conflict, to review resolution options upon perceiving it, and to take action to resolve it. Discusses 3-behavior-zone analogy (red-yellow-green traffic light) and training resources available to command.

- Related appendices include--

- Appendix F (Informal Resolution System (IRS) skills booklet)
- Appendix G (Training Information Resource (TIR) bibliography)
- Appendix K (IRS case studies)

Chapter 7. Options for correcting civilian offenders

- Disposition options for civilian offenders include--

- Informed, considered decision to close case as unfounded
- Recommend/ratify use of Informal Resolution System (IRS) if appropriate
- Counseling
- Civilian Employee Assistance Program (CEAP)
- Performance appraisals
- Security clearance/PRP adjustment or withdrawal
- Oral or written admonition
- Corrective action (e.g., reassignment and/or EEO training)
- Disciplinary action ranging from reprimand to removal from Federal service
- Criminal prosecution (in coordination with cognizant authorities)

- Related appendices include--

- Appendix A (copy of SECNAVINST 5300.26B)
- Appendix F (Informal Resolution System (IRS) skills booklet)
- Appendix H (OCPM Schedule of Offenses and Recommended Remedies)
- Appendix J (bibliography of references related to sexual harassment)
- Appendix K (IRS case studies)
- Appendix L (Fleet Case Studies)

Chapter 8. Options for correcting military offenders

- Disposition options for military offenders include--

- Informed, considered decision to close case as unfounded
- Administrative action
 - Recommend/ratify Informal Resolution System (IRS) if appropriate

- Counseling
- Nonpunitive letter of caution
- Extra military instruction
- Denial of privileges
- Letter of instruction
- FITREPS/EVALS
- Security clearance/PRP adjustment or withdrawal
- Reassignment of duties
- Early transfer/delay of transfer
- Detachment for cause
- Administrative separation processing (mandatory if aggravated case)
- Disciplinary action
 - Nonjudicial punishment (NJP chart included)
 - Summary court-martial (N/A to officers; enlisted have right to refuse)
 - Special court-martial (no punitive discharge for officers)
 - General court-martial (prerequisite: Art. 32, UCMJ investigation)
- Related appendices include--
 - Appendix A (copy of SECNAVINST 5300.26B)
 - Appendix B (copy of OPNAVINST 5370.2A)
 - Appendix C (copy of NAVREGS 1165, 1166)
 - Appendix F (Informal Resolution System (IRS) skills booklet)
 - Appendix I (charging sexual harassment under the UCMJ)
 - Appendix J (bibliography of references related to sexual harassment)
 - Appendix K (IRS case studies)
 - Appendix L (Fleet Case Studies)

Appendices. Contain--

- A number of basic directives: SECNAVINST 5300.26B (Sexual Harassment), OPNAVINST 5370.2A (Fraternization), ALNAV 013/93 (NAVREGS 1165, 1166) (Fraternization/Sexual Harassment); also bibliography of other related references.
- Sample Command Policy Statement (every command must promulgate its own) and sample POD/POW notes.
- Copy of the Informal Resolution System (IRS) skills booklet and the IRS Training Information Resource (TIR) Library Bibliography.
- OCPM Schedule of Offenses and Recommended Remedies for civilian offenders.
- Detailed chart for charging sexual harassment under the UCMJ.

- IRS case studies.
- Fleet case studies.
- Guidelines for the command investigating officer of sexual harassment complaints.

Chapter 2

POLICY / RESPONSIBILITIES / DEFINITIONS

1. **Sexual harassment's effects:** demeans its victims/denies them the chance to do their best, undermines integrity of senior/subordinate relationships, tarnishes the Navy's reputation, and negatively impacts productivity and readiness by--

- increased absenteeism
- greater personnel turnover
- lower morale
- litigation exposure
- decreased effectiveness
- loss of personal, organizational, and public trust

2. **SECNAVINST 5300.26B, Department of the Navy (DON) Policy on Sexual Harassment** (appendix A of this Handbook)--

- applies to all DON personnel;
- establishes detailed DON policy (with definitions and non-technical examples) and responsibilities and accountability for identification/prevention/elimination of sexual harassment and establishes regulations to enforce the policy;
- makes clear that violations may subject offenders to punitive, disciplinary, or administrative action under military or civilian systems; and
- mandates expanded education and training requirements, an effective system to resolve complaints, a DON information system for tracking sexual harassment incidents.

3. **DON Policy**

- a. The Navy team must be comprised of an optimally integrated group of men and women who must be able to work together to accomplish the mission.
- b. All DON personnel, military and civilian, are entitled to be treated fairly, with dignity and respect, and must be allowed to work in an environment free of unlawful discrimination and other inappropriate behavior.
- c. Sexual harassment (a form of unlawful discrimination) is prohibited.

d. Leadership is the key to eliminating all forms of unlawful discrimination and must be the cornerstone of the effort to eliminate sexual harassment.

e. Upon accession and annually, all DON personnel will be educated/trained in identification, prevention, resolution, and elimination of sexual harassment. Training programs will use a three-tier (Red/Yellow/Green) behavioral zone approach to explain the spectrum of sexual harassment.

f. Individuals who believe they have been sexually harassed will be afforded multiple avenues to seek resolution and redress; all personnel will be made aware of these avenues. Counseling support or referral services will be made available for all involved in incidents of sexual harassment.

g. Commanders and those in supervisory positions will ensure that complaints of sexual harassment can be made in a command climate that does not tolerate acts of reprisal, intimidation, or further acts of harassment.

h. All reported incidents of sexual harassment will be investigated and resolved at the lowest appropriate level promptly and with sensitivity. Confidentiality will be maintained to the extent possible and appropriate feedback will be provided.

4. Responsibilities

a. Commanders, activity heads, and supervisors must--

- (1) Lead the men and women under their control;
- (2) Set the example in treating all people with mutual respect and dignity;
- (3) Foster a climate free of all forms of unlawful discrimination;
- (4) Not ignore or condone sexual harassment in any form;
- (5) Prevent sexual harassment in their commands/work environments; and
- (6) Take whatever action is required to ensure that a recipient of sexual harassment is not subsequently also the victim of reprisal or retaliation.

b. All personnel are responsible for treating others with mutual respect and dignity.

c. Individuals who believe that they have been sexually harassed are encouraged to address their concerns or objections regarding the incident directly with the person demonstrating the harassing behavior. (SECNAV has established an

Informal Resolution System (IRS) towards this end. See chapter 6 of this Handbook.)

d. Persons who are subjected to or observe objectionable behavior should promptly notify the chain of command if--

(1) The objectionable behavior does not stop; or

(2) The situation is not resolved; or

(3) Addressing the objectionable behavior directly with the person concerned is not reasonable under the circumstances; or

(4) The behavior is independently-criminal in nature.

5. **Accountability**. Per paragraph 8 of SECNAVINST 5300.26B--

a. **No individual in the DON shall:**

(1) Commit sexual harassment;

(2) Take reprisal action against a person who provides information on an incident of alleged sexual harassment;

(3) Knowingly make a false accusation of sexual harassment; or

(4) While in a supervisory or command position, condone or ignore sexual harassment of which he or she has knowledge or has reason to have knowledge.

b. These prohibitions apply to all conduct which occurs in or impacts a DOD working environment. The "reasonable person" standard shall be used to determine whether a violation of these provisions has occurred.

c. The appropriate action to resolve an incident of sexual harassment will depend on the circumstances surrounding that incident.

d. A violation of these provisions by civilian employees is a basis for disciplinary action. (See chapter 7 and appendix H of this Handbook.)

e. A violation of these provisions by military personnel is punishable in accordance with the UCMJ. (See chapter 8 and appendix I of this Handbook.)

f. Military personnel shall be processed for administrative separation on the first substantiated incident of sexual harassment involving--

- (1) Action, threats, or attempts to influence another's career or job in exchange for sexual favors; or
- (2) Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in a punitive discharge.
- (3) An incident is substantiated if there has been a court-martial conviction or if the commanding officer determines that sexual harassment has occurred.
- (4) Commanders are not precluded from initiating administrative separation proceedings for other instances of sexual harassment.

6. **Definitions.** (See enclosures (1) and (2) to SECNAVINST 5300.26B (appendix A of this Handbook).)

a. **Sexual harassment.** Sexual harassment is a form of unlawful sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or
- (2) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or
- (3) Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

b. **Conduct of a sexual nature.** Conduct (either physical or verbal) that a reasonable person would find sexual in nature in light of the relevant facts and circumstances. This also includes conduct that denigrates or shows hostility toward an individual because of his/her gender. Such behavior does not need to be overtly sexual, and can be toward the same sex or different sex (but will not generally include conduct which is addressed equally to both sexes (unless the impact is

unequal).) The conduct can be by a supervisor, coworker, senior, subordinate, contractor, customer, etc. Examples include but are not limited to sexual advances, propositions, or physical contact; sexually suggestive touching, language, gestures, or mannerisms; gender-based remarks, slurs, or epithets; displays or circulation of sexually explicit material; and similar behavior. But poor management practice or a personality conflict where there are no covert or overt sexual overtones is not sexual harassment.

c. **Hostile Environment**. A situation that occurs when the unwelcome sexual behavior of one or more persons in a workplace produces a work atmosphere which is unreasonably offensive, intimidating, or abusive to another person. Such behavior must be severe or pervasive, not trivial or merely annoying, as viewed through the perspective of a "reasonable person." However, the recipient does not have to suffer anxiety or debilitation or give evidence of psychological effect. Factors pertinent to assessing whether an environment is "hostile" include--

- (1) Whether the conduct was verbal or physical, or both;
- (2) How frequently the conduct was repeated;
- (3) Whether the conduct was patently offensive;
- (4) Whether the offending person was a coworker or a supervisor;
- (5) Whether others joined in perpetrating the behavior;
- (6) Whether the behavior was directed at more than one individual.

d. **"Knowingly" false complaint**. It is not a violation to make a false complaint unless the person making the complaint does so "knowingly." Accordingly, it is not a violation to make even a baseless complaint in good faith. Thus even if a sexual harassment complaint ultimately proves to be without merit, there would still be no violation unless it can also be established that the complainant knew the allegation was false when made. Proving what a complainant "knew" can be difficult. Possible sources of evidence include statements the complainant might have made to friends/co-workers and/or other pertinent circumstantial evidence. CO's/activity heads should proceed most cautiously when considering disciplinary action for a false complaint, since unless the evidence against the complainant is substantial, there can be a real risk that the command action could be seen as a reprisal.

e. **"Quid Pro Quo" sexual harassment**. (Literally, "this for that.") The type of sexual harassment (addressed in paragraphs 6.a (1) and (2) above) involving offers of favorable job-related decisions/actions in exchange for submitting to unwelcome sexual behavior, or involving threats or actions to withhold favorable job-

related decisions/actions, or impose unfavorable ones, based upon rejection of unwelcome sexual behavior. This could include a promise to approve employment or a promotion, a threat of or an actual demotion, a duty assignment, or a positive or negative performance evaluation. Such an offer or threat can either be express or implied. It is not necessary to establish "hostile environment" in "quid pro quo" cases, nor is it necessary that a recipient actually suffer monetary loss or loss of job or benefits--the mere making of the offer or threat is sufficient.

f. **Reasonable Person Standard**. An objective test used to determine if behavior constitutes sexual harassment. This standard considers what a reasonable person's reaction would have been under similar circumstances and in a similar environment. The reasonable person standard considers the recipient's perspective and not stereotyped notions of acceptable behavior. For example, a work environment in which sexual slurs, the display of sexually suggestive calendars, or other offensive sexual behavior abound can constitute sexual harassment as to those affected even if other people might deem it to be harmless or insignificant.

g. **Reprisal**. The wrongful threatening or taking of unfavorable action--or withholding of favorable action--in respect to a person solely because the person reported sexual harassment or other inappropriate conduct.

h. **Unwelcome**. Conduct that is not solicited and which is considered objectionable by the person to whom it is directed and which could be undesirable or offensive to a reasonable person. For "tamer" conduct where reasonable views of offensiveness/unwelcomeness could differ, it might not be sexual harassment unless a person continues in a course of conduct after notification of unwelcomeness. On the other hand, there is no "one-free-bite" dispensation for graphically explicit sexual comments, nor is there any need for a recipient to first object to conduct wholly outside any reasonable bounds of propriety--for such instances wherein no reasonable person should fail to appreciate that all recipients will probably be offended, even one incident can constitute harassing behavior. "Unwelcomeness" may be conveyed verbally or non-verbally. There does not have to be active resistance (especially in quid pro quo situations). Note also that even if the actual recipient in fact welcomes such conduct, it may still constitute discrimination against non-participating subordinates.

i. **Work Environment**. The workplace or any other place that is work-connected, as well as the conditions or atmosphere under which people are required to work. Examples of work environment include, but are not limited to, an office, an entire office building, a DOD base or installation, DOD ships, aircraft or vehicles, anywhere when engaged in official DON business, as well as command-sponsored social, recreational and sporting events, regardless of location.

7. **Behavior Zones.** (See enclosure (3) to SECNAVINST 5300.26B and chapter 6 and appendices A and F of this Handbook.) Trying to determine exactly what kinds of a wide range of behavior constitute sexual harassment often is not easy, and it is not intended to prevent the types of behavior which are appropriate in normal work settings and which contribute to camaraderie. The Navy trains its personnel to assess behavior using a traffic light analogy. Behavior can be viewed as falling into three different zones, analogous to the red, yellow, or green of a traffic light. Green means "Go"; such behavior is always acceptable and is not sexual harassment. Red means "Stop! Don't do it"; red=zone behavior is always unacceptable. Yellow means "Use caution, prepare for red." Yellow-zone behavior could be viewed as sexual harassment by some people, and how it is perceived depends upon the actual situation and the individuals involved. Just as with a traffic light, if in the yellow zone long enough, the light will turn red. If yellow zone behavior is repeated enough, especially after having been told it is unwelcome, it becomes red zone behavior--sexual harassment. The following examples illustrate these three types of behavior, but they are certainly not all-inclusive:

a. **Green zone.** Not sexual harassment: performance counseling, touching which could not reasonably be perceived in a sexual way (such as touching someone on the elbow), counseling on military appearance, social interaction, showing concern, encouragement, a polite compliment, or friendly conversation.

b. **Yellow zone.** Some people could reasonably view these behaviors as unwelcome, and they could become sexual harassment: violating personal "space", whistling, questions about personal life, lewd or sexually suggestive comments, suggestive posters or calendars, off-color jokes, leering, staring, repeated requests for dates, foul language, unwanted letters or poems, sexually suggestive touching, or sitting or gesturing sexually.

c. **Red zone.** These behaviors are always considered sexual harassment: sexual favors in return for employment rewards, job-related threats if sexual favors are not provided, sexually explicit pictures (including calendars or posters) or remarks, using status to request dates, or obscene letters or comments. The most severe forms of sexual harassment constitute such independently-criminal conduct as sexual assault (ranging from forcefully grabbing to fondling, forced kissing, or rape).

8. **Relationship between SECNAVINST 5300.26B and other laws and directives**

a. **EO/EEO "big picture."** Sexual harassment prevention is just one facet of a comprehensive EO/EEO program. Key references include: OPNAVINST 5300.9 (series), Navy Policy on Sexual Harassment; OPNAVINST 5354.1C, Navy Equal Opportunity/Navy Equal Opportunity Manual; OCPMINST 12713.2, Department of the Navy Discrimination Complaints (CPI 713); SECNAVINST 12720.5A, The Department

of the Navy Civilian Equal Employment Opportunity Program; OPNAVINST 12720.4B, Equal Employment Opportunity Program Management.

b. **Other prohibitions against sexual harassment.** Sexual harassment is also prohibited by Article 1165 of U.S. Navy Regulations (appendix C of this Handbook) and a number of other instructions. However, SECNAVINST 5300.26B should generally be viewed as the primary reference, particularly since it is also a general order and contains more details, including definitions of key terms.

c. **Other prohibited conduct.** Just because conduct is not sexual harassment, doesn't necessarily mean it's "OK." Sexual harassment is only one type of discrimination, and conduct that doesn't meet the definition of sexual harassment can still be inappropriate or even criminal. Such other prohibited conduct may overlap with sexual harassment, or surface during a sexual harassment inquiry. Thus even welcome conduct is improper if it constitutes fraternization or a violation of the Standards of Conduct or is otherwise inappropriate. Likewise, unlawful discrimination on some basis other than sex is equally impermissible. Reference to other laws or directives may be indicated where the conduct in question is particularly serious, or not adequately covered by SECNAVINST 5300.26B. (See appendices H and I of this Handbook for examples.)

(1) **Fraternization.** Article 1165 of U.S. Navy Regulations (appendix C of this Handbook) and OPNAVINST 5370.2A (appendix B to this Handbook) prohibit the following--

(a) Any officer-enlisted personal relationship which is unduly familiar and does not respect differences in rank and grade.

(b) Any officer-officer or enlisted-enlisted personal relationship which is unduly familiar and does not respect differences in rank and which is prejudicial to good order and discipline or of a nature to bring discredit upon the naval service. Such circumstances include those which--

- call into question a senior's objectivity;
- result in actual or apparent preferential treatment;
- undermine the authority of a senior; or
- compromise the chain of command.

(c) Unduly familiar officer-officer or enlisted-enlisted relationships are specifically prohibited when the parties are in a direct senior/subordinate relationship in the same military chain of command. The following unduly familiar officer-officer or enlisted-enlisted relations between members of the same command are also typically

prejudicial to good order and discipline--even when there is no direct supervisory relationship: staff/student or CPO/junior (E-6 and below).

(d) While fraternization can involve sexual conduct such as dating, cohabitation, or sexual relations, it is a gender-neutral concept and can also involve non-sexual conduct (such as an inappropriate business partnership for private gain).

(2) **Standards of Conduct.** DODDIR 5500.7 of 30 Aug 93, Standards of Conduct, and DOD 5500.7-R, Joint Ethics Regulation (JER), prohibit such conduct as using official position for private gain, giving preferential treatment, use of official time for unofficial activities, use of government property for unauthorized purposes, and unauthorized giving/accepting of gifts. (See ALNAV 139/93.)

(3) **Other related offenses.** These might include maltreatment of subordinates, disrespect, bribery, graft, adultery, assault, or even rape.

9. **Case studies.** The case studies contained in appendices J and K of this Handbook further illustrate the foregoing concepts.

Chapter 3

THE KEY--ESTABLISH A POSITIVE COMMAND/ACTIVITY CLIMATE ("An ounce of prevention . . .")

1. **Leadership.** Sound leadership is essential to eliminating all forms of unlawful discrimination and other inappropriate behavior. SECNAVINST 5300.26B (appendix A of this Handbook) requires commanders and those in supervisory positions to foster a positive command/activity climate, in which each member is treated fairly, with dignity and mutual respect, and wherein individuals are allowed and encouraged to resolve conflicts between themselves without fear of reprisal.
 - a. Set the example.
 - b. You are responsible for--and must be committed to--eliminating sexual harassment (as well as other disruptive, provoking, discriminatory, or unprofessional conduct) in your command/activity.
 - c. Establish and disseminate clear command/activity policy and create and nurture the processes to implement it. Assign responsibility for program administration, execution, and evaluation; establish internal procedures to process informal and formal complaints of discrimination/harassment expeditiously.
 - d. By all means use available prevention and support programs to the fullest, but don't rely on them exclusively. Constantly explore ways to expand and improve your campaign. Don't forget your own ideas and imagination, nor your people's.
 - e. Enlist the active support of your LPC's/CPO's/JO's/managers, emphasizing their responsibility and accountability for an environment free of unlawful discrimination.
 - f. Give your people any assistance they need.
 - g. Keep lines of communication open so sexual harassment cannot go unreported.
 - h. Do not ignore or condone sexual harassment in any form.
 - i. Ensure that all reported incidents of sexual harassment are investigated.
 - j. Take (or support) decisive and appropriate corrective action when infractions occur. Seek to resolve indications of sexual harassment at the lowest appropriate level, promptly and with sensitivity. Intervene when necessary. Maintain

confidentiality to the extent possible and provide feedback to all affected individuals consistent with the requirements of the Privacy Act and other pertinent laws, regulations, and negotiated agreements.

2. **Key references.** Sexual harassment prevention is just one facet of what should be a comprehensive command EO/EEO program and continuing emphasis on the Navy core values of honor, courage, and commitment. (While the focus of this Handbook is on sexual harassment, your EO/EEO programs and positive climate should be equally supportive of other women's issues, minorities (e.g., African Americans, Hispanics, Asian-Pacific, and Native American Indians), people with disabilities, disabled veterans, religious accommodation, etc.) This chapter highlights a number of related requirements imposed by other directives, but the actual provisions of these directives are controlling (and may change), and you should review and comply with the current versions thereof.

- a. SECNAVINST 5300.26B, Department of the Navy (DON) Policy on Sexual Harassment (appendix A of this Handbook).
- b. OPNAVINST 5300.9 (series), Navy Policy on Sexual Harassment.
- c. SECNAVINST 5350.10B, Equal Opportunity (EO) Within the Department of the Navy
- d. OPNAVINST 5354.1C, Navy Equal Opportunity/Navy Equal Opportunity Manual.
- e. OCPMINST 12713.2, Department of the Navy Discrimination Complaints (CPI 713).
- f. OCPMINST 12720.1, Equal Employment Opportunity and Affirmative Employment Programs (CPI 720).
- g. SECNAVINST 12720.5A, The Department of the Navy Civilian Equal Employment Opportunity Program (enclosing DODDIR 1440.1 of 21 May 87, The DoD Civilian Equal Employment Opportunity (EEO) Program).
- h. OPNAVINST 12720.4B, Equal Employment Opportunity Program Management.
- i. DODDIR 5500.7 of 30 Aug 93, Standards of Conduct, and DOD 5500.7-R, Joint Ethics Regulation (JER). (See ALNAV 139/93.) Issues which may be related to sexual harassment include using official position for private gain, giving preferential treatment, use of official time for unofficial activities, use of government property for unauthorized purposes, and unauthorized giving/accepting of gifts.)

j. OPNAVINST 5040.7K, Naval Command Inspection Program. Sexual harassment, EO/EEO, and standards of conduct have been and continue to be items of special interest to SECNAV and CNO during command inspections and area visits. (See latest OPNAVNOTE 5040 for current list and areas of focus.)

k. Informal Resolution System (IRS) Skills Booklet, "Resolving Conflict . . . Following the Light of Personal Behavior" (NAVPERS 15620) (appendix F of this Handbook).

l. Other pertinent references of ISIC, TYCOM, etc.

m. See appendices G and J of this Handbook for a bibliography of other pertinent references.

3. **Make sure your people get the word.**

a. Issue and periodically restate command/activity EO policy statement per OPNAVINST 5354.5, para. 2a.

b. Issue and periodically restate command/activity EEO policy statement per OPNAVINST 12720.4B, para. 2a.

c. Issue and periodically restate command/activity Sexual Harassment policy statement per: OPNAVINST 5300.9 paras. 4, 5; OPNAVINST 5354.5, para. 2b; OPNAVINST 12720.4B, para. 2b. Clearly define what is prohibited; firmly state that it won't be tolerated; mandate protection from reprisals against individuals who submit grievances. (See appendix D of this Handbook for a sample.)

d. Promulgate policy statements of DOD, DON, ISIC, TYCOM, etc., as required.

e. Continually communicate to all personnel policies and practices relating to sexual harassment, EO/EEO, and standards of conduct/ethics, including assignment of responsibilities and procedures for processing discrimination complaints and the avenues of resolution and redress that are available. Emphasize personal accountability and individual excellence in personal ethics.

(1) Periodically publish information on sexual harassment prevention. (Appendix E contains sample POD/POW notes.)

(2) Prominently post the grievance poster "Navy Procedures For Processing Discrimination Complaints/Grievances For Military Personnel" (available via Form DD 1348 to Naval Publications and Forms Center, 5801 Tabor Ave., Philadelphia, PA 19120, stock # 0506-LP-175-5200).

(3) Post, periodically publish, and otherwise advertise the DON Sexual Harassment Advice Line (1-800-253-0932, DSN 224-2735, 703-614-2735 (call collect from overseas)) and Inspector Generals' Hotlines (see list in chapter 5 of this Handbook).

(4) Periodically publish names of EO counselors (for military) and EEO program officials and counselors (for civilian employees) (shore commands). Also post on all official bulletin boards.

(5) Display prominently the "Code of Ethics for Government Service" poster throughout command (copies available from appropriate GSA regional office, stock # 7690-01-099-8167).

(6) Periodically publish information on standards of conduct.

(7) Prominently display the Informal Resolution System (IRS) standard stock posters (NP-15626, SN 0500LP5432700).

(8) Periodically publicize to all hands information on their rights to submit formal or informal grievances, procedures for submitting, entitlement and availability of legal advice and counsel, and other shore-based assistance available. Also post on official bulletin boards.

f. Continually train and educate (see below).

4. Train/educate. Thoroughly document all training and monitor effectiveness to continually improve.

a. Demonstrate leadership's commitment/use leadership's expertise.

(1) Regularly introduce and participate in/take a leadership role in training yourself to ensure personnel understand your personal commitment.

(2) Use LPO's/CPO's/JO's/supervisors in unit EO/EEO training as instructors, discussion leaders, resources for answering questions.

b. Mandatory training for prevention of sexual harassment. Regularly provide sexual harassment prevention training to ensure that personnel know what sexual harassment is (using the three-behavioral-zone model), its harmfulness, and that it won't be tolerated. (Source: SECNAVINST 5300.26B; OCPMINST 12720.1.)

(1) Required for all new accessions (within 90 days to the extent possible).

(2) Required at least annually for all hands.

(3) CNO will be providing self-facilitated training packages, videos, and other materials as part of a 3-year revolving cycle. (See NAVADMIN 147/93 and appendix F of this Handbook.)

(4) Document all civilian training in the Defense Civilian Personnel Data Base (DCPDB) (maintained at HRO).

c. Regularly provide standards of conduct training to all hands. (Source: DOD 5500.7-R, Joint Ethics Regulation (JER).)

d. Ensure managers and supervisors (military and civilian) of civilian employees receive EEO training (including "role of the supervisor") within 6 months after appointment into a supervisory position, and annually. (Sources: OPNAVINST 12720.5B; OCPMINST 12720.1.)

e. Conduct Navy Rights and Responsibilities (NR&R) workshops for military personnel. (Source: OPNAVINST 5354.1C; -see paragraph 5.a below.)

(1) Newly reporting personnel NR&R workshop--required within 90 days of reporting to a new permanent duty station. Conduct training frequently enough to keep class below 20 people. Teach all lesson topics per CNET workshop course guide. Use critique sheets for feedback on workshop effectiveness.

(2) Annual all-military personnel NR&R workshop. Review updated Navy EO policies and the Navy EO climate. Forum for discussing CNO and command specific issues, sexual harassment prevention training. Conduct in conjunction with annual command EO assessment--utilize training guide provided by CNET. (This can also satisfy requirement for annual all-hands sexual harassment prevention training-- see paragraph 4.b above.)

f. Ensure all CTT and CAT members (see paragraph 5) are themselves properly trained. Members must complete Navy EO correspondence course (NAVEDTRA 13099-C) within three months of assignment to team. Team members who have not performed as such in over 24 months must repeat formal training. Record training in members' service records.

g. Ensure EEO officials meet X-118 Qualification Standards and that the Deputy EEO Officer (DEEOO) or Special Assistant for EEO (SAEEO) is trained in processing discrimination complaints per CPI 713A. Provide on-going training opportunities; encourage participation in EEO or civilian personnel-related conferences, seminars sponsored by OPM, EEOC, DON, other government agencies, and national women's organizations whose goals and objectives will advance the Navy's EEO policies. Collateral duty personnel will receive basic EEO and personnel-related training within the first three months of appointment. EEO

counselors will attend the Basic EEO Counseling Course prior to participating in any counseling session, and receive 24 hours of training annually thereafter. (Sources: OPNAVINST 12720.4B; OCPMINST 12713.2; OCPMINST 12720.1.)

h. Tap available resources such as--

(1) Informal Resolution System (IRS) Training Information Resource Library (TIR). (See chapter 6 and appendix G of this Handbook.)

(2) Equal Opportunity Program Specialists (NEC 9515) (available at major commands/staffs). (Information on location of EOPSs can be obtained by contacting EOPS Community Manager (PERS-61F) at DSN 224-2007, commercial (202) 694-2007.)

(3) CNET training sites: Fleet Training Center, Norfolk, VA; Fleet Mine Warfare Training Center, Charleston, SC; Amphibious School, Coronado, CA; Submarine Training Center Pacific, Pearl Harbor, HI; Naval Education and Training Program Management Support Activity (NETPMSA), Pensacola, FL. Training may also be available from mobile Training Teams from CNET and EOPS assigned to major commands/staffs.

5. **CMEO**. (Sources: OPNAVINST 5354.5, OPNAVINST 5354.1C.) Implement and practice CMEO at command. CMEO has four components: CTT, CAT, action planning to implement/track correction of problems, and ISIC inspections.

a. Command Training Team (CTT). Conducts Navy Rights and Responsibilities workshops for all newly reported personnel and annually for all hands (see paragraph 4.e).

(1) Assign required number of CTT members required for command size. Carefully screen all CTT members to ensure they are qualified, highly motivated, experienced, able to lead/facilitate group discussions on navy/command policy, and properly trained. (See paragraph 4.f.)

(2) Commands with less than 50 personnel are not required to have a formally trained CTT if arrangements can be made to participate in the NR&R workshops of a host/neighbor. (Command still responsible for addressing command-specific issues and policy updates and making proper service record entries of training received.)

b. Conduct annual command assessment (also special assessment if warranted by a particular incident).

c. Command Assessment Team (CAT). Ensure that all CAT members are qualified and properly trained (see paragraph 4.f). Appoint at least XO, one DH, and CMC; also command career counselor, personnel officer, and legal officer where assigned; others so as to represent cross-section of command. CAT conducts--

(1) data collection from training records, SOQ/SOM file, meritorious mast records, discrimination/harassment complaints, retention files, interviews, observations, surveys (EO Question Bank in CAT indoctrinations course guide is a source of possible questions), demographics, advancement records, separations records, discipline records. (Retain assessment data for 36 months.)

(2) annual command assessment. Develops POA&M to implement and track correction of existing/potential problems.

d. ISIC inspections of CMEO program should diligently oversee subordinate commands' EO/EEO programs.

6. Assignments/opportunities/advancement

a. Make assignments and collateral duties based on talent and ability irrespective of what is "traditional" or "non-traditional" for their group.

b. Include women in affirmative employment program (AEP) plans. (In the Navy, women have been particularly under-represented in the engineering, skilled blue collar, and high grade areas.) Provide annual AEP accomplishment reports per pertinent directives.

c. Ensure women receive equality of opportunity in training, advancement and upward mobility programs. Publicize and actively support applications for enlisted to officer accession programs such as USNA, NAPS, NROTC, BOOST, ECP, OCS, AOCS, LDO, and CWO. Identify qualified women and encourage and counsel to apply for commissions.

d. Provide Career Reenlistment Objectives (CREO) information to all enlisted personnel to assist in selecting viable and attractive career patterns without regard to what is "traditional" or "non-traditional" for their group.

7. FITREPS/EVALS/Performance ratings

a. Establish meaningful, measurable EEO/EO performance objectives. Evaluating supervisors and servicemembers as to their compliance/support. Make sure ratees are aware of this and of its importance!

- b. Monitor rating processes to ensure all personnel are evaluated fairly and without bias.
- c. Hold supervisors accountable for regularly documenting subordinates' performance, especially in the case of declining performance, by maintaining personal counseling records, submitting special evals, taking other remedial action. (See paragraph 12 of this chapter and Fleet Case Study 3 in appendix L of this Handbook.)

8. Awards/recognition

- a. Provide special recognition to personnel or units demonstrating superior accomplishments in EO/EEO.
- b. Monitor to ensure presentation is without regard to gender (or other) bias for or against recipients.

9. Public affairs

- a. Actively publicize EO/EEO program.
- b. Make conscious effort to publicize the accomplishments of all members in news and feature articles.
- c. Ensure that significant historical events and achievements of women (and minorities) are accorded appropriate recognition (e.g., National Women's History Week, Women's Equality Day).
- d. Ensure women are proportionately represented in radio and television spots or print media produced for internal and external use.
- e. Prepare publicity and other promotional material to motivate women to aspire to higher levels, positions, and occupations with advancement opportunities.
- f. Invite Navy role models to the command to speak and set example for junior personnel.
- g. Promote EO/EEO in recruitment activities in the local community. Foster future employment applicant pools via stay-in-school, partners-in-excellence, and similar programs.
- h. Interface with host communities to ensure local activities have a good understanding of the Navy's EO/EEO policy. Invite local community leaders to tour

base and meet EO/EEO personnel. Encourage unit members to participate in host community affairs.

10. Additional measures to strengthen comprehensive EO/EEO climate

- a. Ensure equitable service at command facilities by providing for the needs of all members in terms of personal products, uniform articles, personal services, entertainment provided at base clubs and theaters, etc.
- b. Ensure women are included on advisory and decision-making committees and councils (entertainment, commissary/exchange, etc.).
- c. Provide a variety of appropriate recreation and entertainment activities responsive to the interests of all personnel. Intentional or unintentional segregation or exclusion shall not be condoned. The avoidance of facilities by women (or minorities) may be indicative of harassment or discrimination. Subtle harassment can be in the form of playing only certain types of music, displaying offensive pictures/posters, or by limiting the selection of entertainment to particular groups.
- d. Shore commands: Assign an individual (officer or senior PO) to provide assistance to military personnel needing help in resolving discrimination/sexual harassment problems and processing complaints. Ensure that person is trained in EO/sexual harassment policies and knowledgeable in the processing of discrimination complaints. Widely publicize availability to all hands. Person should be accessible to all personnel and have direct access to CO/OIC/activity head.
- e. Commands with civilian personnel: CO/activity head is command's EEO Officer. Depending upon size of command, designate full- or part-time DEEOO, SAEEO, or internal command POC for EEO; other EEO specialists as appropriate. Ensure that an adequate number of EEO counselors are available for aggrieved employees or applicants for employment. Develop Affirmative Employment Program (AEP) Plan and Federal Equal Opportunity Recruitment Program (FEORP) and upward mobility program as required for size of activity. Provide system for periodically evaluating EEO program. Establish EEO Committee to provide a forum for surfacing and frankly discussing concerns.
- f. Pursue off-limits sanctions on civilian establishments that discriminate against military personnel and family members. (See OPNAVINST 1620.2.)
- g. Ensure that private organizations that practice unlawful discrimination are not provided access to on-base facilities or use military resources.

11. Identify, evaluate, correct unacceptable practices

a. Take (or support) prompt, decisive, and appropriate corrective action when infractions occur. Use care and judgment in deciding upon the procedures by which complaints can be most effectively investigated, reviewed, and acted upon. Seek to resolve indications of sexual harassment at the lowest appropriate level. Do not get involved when conflict is being resolved by those directly involved. Intervene when necessary--

(1) Chapter 4 of this Handbook discusses general considerations in assessing complaints.

(2) All reported incidents of sexual harassment should be investigated. (See chapter 4 and appendix M of this Handbook.)

(3) Ensure that counseling support or referral services are available for all involved in incidents of sexual harassment. (See chapter 5 of this Handbook, "Avenues for Redress/Support Services.")

(4) Chapter 6 of this Handbook discusses the Informal Resolution System.

(5) Chapter 7 of this Handbook discusses options for correcting civilian offenders.

(6) Chapter 8 of this Handbook discusses options for correcting military offenders.

b. Ensure that previous disciplinary action or poor judgment on the part of the complainant in no way invalidates or prejudices an otherwise valid complaint.

c. Avoid further traumatizing recipients; treat all involved with sensitivity; maintain confidentiality to the extent possible.

d. Provide feedback within a reasonable time to all affected individuals consistent with the requirements of the Privacy Act and other pertinent laws, regulations, and negotiated agreements.

12. Inoculate against reprisals. Establish and enforce command procedures to ensure that a recipient of sexual harassment is not subsequently also the victim of reprisal or retaliation.

a. Reprisal can be overt or subtle: reduction in FITREP/evaluation marks "out of the blue," inequity in duty assignments, increased workload/watchstanding, not

recommending personnel for advancement, retention, or special programs. (See paragraph 7.c above and Fleet Case Study 3 in appendix L of this Handbook.)

- b. Actively follow complainant's performance/evaluation.
- c. Assign a personal advocate for the complainant.

Chapter 4

ROADMAP FOR HANDLING SEXUAL HARASSMENT COMPLAINTS

1. **Complaints.** A complaint is nothing more than bringing to the attention of proper authority the known, suspected, or probable commission of an offense under the UCMJ, a violation of a civil law, or other inappropriate conduct. A complaint may be made orally or in writing. Regardless of who originally received the complaint, it should be forwarded to the cognizant disposition authority (normally the immediate CO/OIC/activity head of the offending person).
 - a. Any person may initiate a complaint: military or civilian, adult or child, officer or enlisted.
 - b. Note that initiating a complaint is not the same as preferring charges--the latter being the separate function of signing and swearing to charges in preparation for court-martial.
 - c. Note also that **it is not mandatory that any complaint be filed at all--no CO/OIC/activity head can ever ignore evidence of inappropriate conduct of which he/she becomes aware.** The same is true for all supervisors, and under the IRS, for all DON members.
 - d. Examples: Report and Disposition of Offense(s) (NAVPERS Form 1626/7) ("report chit"); statement of a recipient/victim, co-workers, friends, parents, or other witness; anonymous command hotline call; CO/OIC/activity head's own personal knowledge (proceed as if complaint filed).
2. **Upon receipt of a complaint, appropriate action is mandatory.** Per SECNAVINST 5300.26B, **all reported incidents of sexual harassment will be immediately investigated and resolved via appropriate corrective action at the lowest appropriate level.** Upon becoming aware of harassing conduct, it is therefore mandatory for proper authority (ordinarily the immediate CO/OIC/activity head) to take immediate action to determine what disposition should be made thereof in the interests of justice and discipline. **Disposition must be accomplished with sensitivity and based upon an investigation sufficient for an intelligent decision.** (Note carefully the difference between dismissing a complaint as unfounded after adequate inquiry (permissible) as opposed to failing to adequately investigate a complaint (never permissible).) In all cases, therefore, the appropriate authority must ensure that an appropriate investigation has been made. **Close coordination with the command's/activity's legal advisor is highly advisable (from initial receipt of a complaint through final resolution and follow up).**

3. Provide/obtain/offer counseling support/referral services from the outset.

Counseling support or referral services will be made available for all involved in incidents of sexual harassment (includes both recipient and offending person).

Provide these services from the very beginning, continually monitor, and provide follow-up services as needed.

a. Avoid re-victimizing complainants (and witnesses).

b. See chapter 5 of this Handbook for summary of avenues for redress/support services.

c. Special considerations for crime victims and witnesses

(1) References

- SECNAVINST 5800.11, Protection and Assistance of Crime Victims and Witnesses.
- OPNAVINST 1752.1, Rape Prevention and Victim Assistance.

(2) Work with the cognizant Sexual Assault Coordinator or Command Victim/Witness Assistance Coordinator to ensure compliance with applicable guidance to protect, assist, and support crime victims and witnesses; help mitigate any physical, psychological, and financial hardships which they might suffer; and provide access to appropriate counselling and advice as to applicable rights.

(3) Ensure all victims are aware of available supportive resources and applicable rights. Best efforts should be made to ensure that victims are--

- treated with fairness and with respect for the victim's dignity and privacy;
- informed of the availability of medical assistance;
- reasonably protected from the accused;
- notified of status of the investigation, apprehension and pre-trial detention of the accused, referral and referral of charges, plea agreements;
- notified of court proceedings--afforded opportunity to attend those open to the public;
- provided information about accused's conviction, sentencing, imprisonment, release.

(4) Note that criminal sanctions for intimidation and harassment of a witness or victim, obstruction of justice, and communicating threats exist under the UCMJ and many civilian laws.

4. Other preliminary considerations

a. Special Incident Reporting (OPREP-3, Navy Blue, and Unit SITREP Procedures?) (See OPNAVINST 3100.6F (sections X and XI) and ISIC/TYCOM guidance.) Promptly alerting the chain of command may be warranted in particularly serious or sensitive cases.

- In making such reports, avoid reporting sensitive personal information such as personal identities. (See, e.g., OPNAVINST 3100.6F, section XI, para. 2f.)

b. Major criminal offense? While in some situations such extremely serious criminal conduct as sexual assault or rape might technically constitute sexual harassment, the sexual harassment aspects of these cases are at best only secondary. The following summarizes paramount considerations in dealing with major criminal offenses.

(1) Referral to the Naval Criminal Investigative Service (NCIS). There are certain offenses for which immediate referral to NCIS is mandatory. SECNAVINST 5520.3B provides an extensive list and guidance for those offenses that NCIS must investigate. Upon referral of a case to NCIS, any command action on the case should be held in abeyance. However, if immediate referral to NCIS is impossible, steps should be taken to preserve evidence and ensure the safety of personnel involved, taking care not to compromise or impede any subsequent investigation.

(2) "Major" offenses. Among the types of incidents which must be referred to NCIS for investigation are:

(a) Incidents of actual, suspected, or alleged major criminal offenses, except those which are purely military in nature. (A "major criminal offense" is one punishable by confinement for a term of more than one year.); or

(b) Incidents of perverted sexual behavior.

(3) Referral by NCIS to other investigative agencies. (See JAGMAN 0125). NCIS is also responsible for coordinating with other agencies (e.g., civilian prosecutions).

(4) Support victims/witnesses. See paragraph 3.c of this chapter.

(5) Review other options of a commanding officer under the UCMJ. For example, depending upon the circumstances it may be appropriate to consider imposing some degree of pre-trial restraint or other limitations upon a military offender to ensure his/her presence or prevent further misconduct. Examples include (in increasing order of severity) imposing conditions on liberty, restriction, arrest, or

confinement. A CO might also be asked to grant a military search authorization. For details consult the Manual for Court-Martial (1984) and the command legal advisor.

c. **Recommend that the individuals involved attempt to use the Informal Resolution System (IRS) to resolve their conflict?** (For a summary of the IRS, see chapter 6 of this Handbook.) This option is not appropriate for clearly criminal "Red zone" behavior. Follow-up is crucial--this is not a final resolution. (If an IRS resolution is effected, see 4.d below; if not, review other options.)

d. **Ratify actions already taken under the IRS to resolve complaint?** (For a summary of the IRS, see chapter 6 of this Handbook.) Unless the conduct is clearly criminal in nature, it is within the CO/OIC/activity head's discretion to forego taking further formal action when a complaint has been resolved under the IRS and the complainant does not desire further action. In such event the CO/OIC/activity head should provide such supplemental support and resource materials as may be appropriate (such as granting a request to provide Training Information Resources (TIR)), monitor and follow-up as necessary, and provide feedback. The CO/OIC/activity head should also ensure that the circumstances surrounding such a disposition are adequately documented in local records in the event of subsequent inquiries.

e. **What further investigation, if any, is indicated?** The nature of the investigation will depend upon the CO's/activity head's assessment of what more is required under the particular facts and circumstances (and any controlling directives of higher authority) to sufficiently resolve and document factual issues. It may be that the matter will already have been adequately investigated. Or it may be that an informal inquiry will do. Certain types of incidents or offenses, however, may be of such a nature as to require exhaustive scrutiny via a fact-finding body. (The regulations covering fact-finding bodies are contained in the JAG Manual and have become known as "JAG Manual investigations." Note, however, that a fact-finding body is not to be utilized in lieu of a preliminary inquiry if the only purpose for conducting an inquiry is to determine the need for disciplinary action. Accordingly, a fact-finding body is unlikely to be appropriate for addressing most complaints of sexual harassment.) It may even be useful in some cases to conduct a preliminary inquiry as a basis for assessing whether a more-detailed effort is warranted.

5. **Command inquiry.** Unless mooted by the foregoing alternatives, the requirement to investigate a sexual harassment complaint will typically be accomplished by a person assigned to the local command. (This also includes cases NCIS has declined.) There are no set procedures or forms for such inquiries, and procedures should be tailored to suit the particular requirements of an individual command. The following are general guidelines--

- a. The overall conduct of the investigation should be both informal and impartial. The person appointed to conduct the inquiry (often called the preliminary inquiry officer (PIO) or investigating officer (IO)) should be sufficiently experienced and outside the rating chain of command of the parties to the complaint. The IO's job should be to gather all relevant evidence, both favorable and unfavorable, essential to determine what happened--it is not the function of the PIO/IO merely to prepare a case against the offending person.
- b. For military offenses normally disposed of at NJP, NAVPERS 1626/7 can serve the dual function of an investigative form and a report chit.
- c. A military offender must be advised of and accorded his/her rights against self-incrimination under Article 31(b), UCMJ.
- d. Civilian employee offender. If required by an applicable collective bargaining agreement, a civilian employee offender must be accorded the opportunity to be accompanied by a union representative at any interview which could result in employee disciplinary action. (The employee need not be advised of this right unless the bargaining agreement also requires this.)
- e. Appendix M of this Handbook contains guidelines for the command investigator of sexual harassment complaints. **Although directed to the investigator, it also can be useful to the CO/OIC/activity head as a checklist in directing an investigation, evaluating its adequacy, formulating conclusions, and assessing options.**
- f. Again, obtaining a legal review of the sufficiency of the completed investigation is highly recommended.

6. Possible command actions after initial inquiry/investigation

- a. If warranted, initiate a formal, more in-depth investigation and/or refer/refer the case to NCIS.
- b. Forward the report to another authority for disposition (e.g., when the current CO/OIC/activity head does not have sufficient disciplinary authority, or inappropriate conduct may have been committed by persons outside the command).
- c. Dispose of the allegations at the command. Each commander/activity head generally has the discretion to dispose of offenses by members of that command.

7. Disposition of allegations. Options for disposition span the spectrum from taking no action on groundless complaints (following appropriate investigation) through counseling, admonition, reprimand, exhortation, disapproval, criticism,

censure, reproach, rebuke, extra military instruction, administrative withholding of privileges, adverse entries in FITREPS/EVALS/performance ratings, downgrading or revocation of security clearances, detachment for cause/civilian termination, separation processing, to NJP/court-martial for military offenders or criminal prosecution of civilians.

a. See chapter 7 of this Handbook for a more detailed listing of options for correcting civilian offenders.

b. See chapter 8 of this Handbook for a more detailed listing of options for correcting military offenders.

8. **Document facts, decisions, and actions.** Consider no case closed until all appropriate paperwork has been completed and preserved for future reference. Command records must be sufficient to permit any subsequent reviewers to clearly ascertain the specific allegations involved, nature/source/analysis of evidence considered (including who was interviewed), all pertinent facts developed, decisions reached, feedback provided, and follow-up and corrective measures taken (including those to detect/deter reprisal). (Note that this applies as well to any case where the ultimate decision is to close a case as unfounded.) Also make appropriate entries in individual personnel records, as applicable.

9. **Protect privacy.** Protect individual privacy through all stages of the process. See SECNAVINST 5211.5D, Department of the Navy Privacy Act (PA) Program.

10. **Provide (and solicit) feedback.** Provide feedback within a reasonable time to all affected individuals consistent with the requirements of the Privacy Act and other pertinent laws, regulations, and negotiated agreements. This includes promptly apprising complainants regarding the status and outcome of any investigation and resolution of each allegation. Handling feedback can be critical to a proper resolution and acceptance of the process by those involved. (Note that these considerations apply to offenders as well as recipients.) Also discuss avenues for further redress if not satisfied. Document feedback provided (see paragraph 8 above).

- Note: Feedback can flow both ways. Also take the opportunity to solicit/assess the perceptions of those involved as to the general command/work center climate and fairness and effectiveness of the complaint resolution process.

11. **Precclude reprisal.** No individual may take or condone reprisals against a person who provides information on an incident of alleged sexual harassment. A reprisal is the wrongful threatening or taking of either unfavorable action against another or withholding favorable action from another solely in response to a report of sexual harassment (or other discrimination). Reprisal can be overt or subtle: reduction in FITREP/evaluation marks "out of the blue," inequity in duty assignments,

increased workload/watchstanding, not recommending personnel for advancement, retention, or special programs.

- a. Make sure your people understand what reprisal is and make it unquestionably clear that it's unlawful and will not be tolerated.
- b. Ensure the complainant knows how and to whom to report any suspected instances of reprisal.
- c. Actively follow complainant's performance/evaluation.
- d. Assign a personal advocate for the complainant.
- e. Document efforts taken to detect/deter reprisal in individual cases. (See paragraph 8 above.)
- f. Hold supervisors accountable for regularly documenting performance, especially in the case of declining performance, by maintaining personal counseling records, submitting special evals, taking other remedial action. (See Fleet Case Study 3 in appendix L of this Handbook.)
- g. Note that DODDIR 6490.1 (14 Sep 93), Mental Health Evaluations of Members of the Armed Forces, prohibits the use of referrals by commands for mental health evaluations in reprisal, establishes rights for members referred by their commands for such evaluations, and imposes specific procedures which commands must follow in order to refer a member for a mental health evaluation. (Publication of the implementing Navy instruction is imminent.)

12. **What if a complaint proves false?** It is just as much a violation of SECNAVINST 5300.26B to knowingly make a false complaint of sexual harassment. Please note, however, that it is not a violation to make even a baseless complaint in good faith. Thus if a sexual harassment complaint proves to be without merit, there would still be no violation unless it can also be established that the complainant knew the allegation was false when made. CO's/activity heads should proceed most cautiously when considering disciplinary action for a false complaint, since unless the evidence against the complainant is substantial, there can be a real risk that the command action could be seen as a reprisal. Prior consultation with the command legal advisor is essential. (See Fleet Case Study 3 in appendix L of this Handbook.)

13. **Make any required statistical reports for the sexual harassment complaint tracking system.** (Watch for the issuance of SECNAVINST 1752.1A detailing applicable requirements (currently being staffed).)

14. Consider/implement command improvements based on lessons learned.

Has the particular incident revealed a need for more attention to existing processes, systemic changes, clarification or reiteration of expectations, more training (work center in question or whole command), etc.? (See paragraph 10 above and chapter 3 of this Handbook.)

Chapter 5

AVENUES FOR REDRESS / SUPPORT SERVICES

1. **Background.** SECNAVINST 5300.26B (appendix A of this Handbook) requires that individuals who believe that they have been sexually harassed will be afforded multiple avenues to seek resolution and redress; that commanders and those in supervisory positions ensure that notification of sexual harassment can be made in a command climate that does not tolerate acts of reprisal, intimidation, or further acts of harassment; and that all personnel will be made aware of the avenues of resolution and redress that are available.

2. **Redress/support services available to all personnel--**

a. **DON Sexual Harassment Advice Line.** (For obtaining confidential counseling and advice for identifying and dealing with sexual harassment and similar inappropriate behavior--not for reporting.)

(Monday - Friday 1000-1800 EST)

TF: (800) 253-0931

DSN: 224-2735

comm: (703) 614-2735 (call collect from overseas)

b. **Informal Resolution System (IRS).** (Ref: IRS Skills Booklet, NAVPERS 15620. See chapter 6 and appendix F of this Handbook.) Both military and civilian personnel are encouraged to utilize the IRS as a means of direct resolution of sexual harassment complaints (not clearly criminal in nature). The IRS was designed to complement, not replace, other processes for resolving complaints of discrimination. The IRS provides an opportunity for the individuals involved to resolve the conflict at an informal level. The IRS can be employed either before pursuing other statutory and regulatory procedures or as a supplemental dispute resolution tool during formal discrimination complaints processing. The three main resolution options of the IRS are--

(1) Direct--recipient attempts to resolve conflict directly with offending person.

(2) Informal 3rd party--recipient (or offending person) enlists the informal assistance of some other person (e.g., coworkers, supervisor, or other party) to help resolve the conflict.

(3) Training Information Resource (TIR)--generic, non-accusatory command training.

- may be requested anonymously
- TIR coordinator notifies CO/OIC/activity head
- CO/OIC/activity head determines if TIR appropriate to address issue

c. **Authorized command forums.** Chain of command, command-sponsored councils and committees, ombudsman, command master chiefs, etc.

d. **Other local resources.** Many locations also have Human Resources Management personnel, Family Service Center (FSC) counselors, Equal Opportunity (EO) advisors, Civilian Employee Assistance Programs (CEAP), Medical Treatment Facilities (MTF), chaplains, legal assistance officers, and so forth, who can assist in reporting and resolving sexual harassment incidents.

e. **Formal complaint to command.** Both military and civilian personnel may report suspected violations of the UCMJ. In addition, SECNAVINST 5300.26B requires an inquiry/investigation into any sexual harassment complaint.

f. **Communications with Inspectors-General.** (Ref: 10 U.S.C. § 1034; SECNAVINST 5430.57F, Mission and Functions of the Naval Inspector General.)

(1) As an alternative to the normal chain of command, DON military and civilian personnel may lodge complaints and provide facts to personnel of the Naval Inspector General (and command inspectors general), without fear of reprisals, concerning violations of laws, rules, and regulations; fraud, waste, or inefficiency; abuse of authority; or other misconduct.

(2) Any person who doesn't feel comfortable filing complaints locally or in person, can lodge complaints (anonymously if desired) via one or more of the following hotlines (toll-free; DSN; commercial)--

(a) Naval Inspector General
TF: (800) 522-3451
DSN: 288-6743
comm: (202) 433-6743

(b) Marine Corps Inspector General
DSN: 224-1349
comm: (703) 614-1349

(c) Atlantic Fleet Inspector General
TF: (800) 533-2397
DSN: 565-5940
comm: (804) 445-5940

(d) Pacific Fleet Inspector General
comm: (808) 471-0735

(e) Naval Forces Europe Inspector General
DSN: 235-4188

(f) Other TYCOM, ISIC, or local commanders' hotlines.

(3) DODDIR 6490.1 (14 Sep 93), Mental Health Evaluations of Members of the Armed Forces, prohibits the use of referrals by commands for mental health evaluations in reprisal for making lawful communications to Members of Congress, higher authority, an inspector general, or other DOD investigation organization. (Publication of the implementing Navy instruction is imminent.)

3. **Additional redress/support available to military personnel--**

a. **Informal grievance**. See section V of enclosure (1) to OPNAVINST 5354.1C.

b. **Request mast with the CO/OIC**. A servicemember may request mast pursuant to NAVREGS 0820 and 1151, 1152, 1156. (See also OPNAVINST 5354.1C.) A member's right to communicate with the CO in a proper manner, and at a proper time and place, may not be denied or restricted. Any such requests shall be acted upon promptly and forwarded without delay.

c. **Article 138 complaint**. A servicemember who believes him/herself wronged by his/her CO may file a complaint under Article 138, UCMJ. JAGMAN chapter III provides details for filing and processing such a complaint. In general--

(1) The complaint usually must be filed within 90 days of the member's learning of the wrong. Complaints seeking disciplinary action against another are not cognizable (but a complaint that a CO failed to take appropriate action can be). A complainant may withdraw his/her complaint at any time.

(2) The complainant must first afford the CO against whom the complaint is filed an opportunity to redress the wrong.

(3) The officer exercising general court-martial jurisdiction (OEGCMJ) will conduct proceedings on the complaint. The OEGCMJ may resolve the complaint, providing SECNAV a report thereof. If not resolved by the OEGCMJ, the complaint will be forwarded for resolution by SECNAV.

d. **Redress of wrong committed by a superior**. (Ref: NAVREGS 1150; JAGMAN chapter III.) A servicemember who believes him/herself wronged may also

file a complaint against any other superior in rank or command who the servicemember believes committed the wrongdoing.

- (1) The complaint should be drafted in temperate language.
- (2) If the complainant and respondent officer are under the command of the same immediate CO, that CO shall resolve the report. If resolved, neither the report nor its resolution need be forwarded to higher authority (unless necessary to effecting redress). (A complainant who considers him/herself wronged by the CO's resolution may proceed under Article 138, UCMJ.)
- (3) If the complainant and respondent officer are not under the same immediate CO, the complaint is forwarded to a common OEGCMJ and generally processed the same as an Article 138 complaint.
- (4) The officer responsible for resolving the complaint may hold the complainant accountable if the report is found to be vexatious, frivolous, or false.

e. **Assistance of personal advocate (at shore commands).** Shore command commanders are responsible for assigning an individual to provide assistance to individuals needing help in processing complaints. (OPNAVINST 5354.1C.)

f. **Assistance of legal counsel.** Counsel may be available at the cognizant Naval Legal Service Office (NLSO) to advise and assist eligible personnel in the preparation of complaints.

g. **Individual communications with Congress.** A servicemember may write an individual letter to members of Congress. (10 U.S.C. § 1034; NAVREGS 1155.)

(1) DODDIR 6490.1 (14 Sep 93), Mental Health Evaluations of Members of the Armed Forces, prohibits the use of referrals by commands for mental health evaluations in reprisal for making lawful communications to Members of Congress. (Publication of the implementing Navy instruction is imminent.)

(2) Note, however, that a military member may not at any time engage in activities relating to servicemembers' unions. Servicemembers are prohibited from joining a military labor organization and from negotiating terms and conditions of military service. Servicemembers (and civilian employees) are also prohibited from organizing or participating in strikes that concern the terms or conditions of military service. It is likewise illegal for Government officials to bargain with such organizations. (10 U.S.C. § 976; NAVREGS 1153; SECNAVINST 1600.1A, Relationships with Organizations which Seek to Represent Members of the Armed Forces in Negotiation or Collective Bargaining.)

4. Additional redress/support available to civilian personnel--

a. Administrative grievance. (Ref: OCPMINST 12771, 18 May 88.) The administrative grievance procedure provides for a civilian employee to address concerns through their supervisory chain of command. A supervisor to whom an employee addresses a covered concern is required to make inquiry into the concern and attempt to resolve it. If an employee raises the issue of sexual harassment discrimination at any stage of the administrative grievance procedure, the grievant will be advised of the right, if desired, to pursue the complaint under the Federal discrimination complaint procedure or to continue under the administrative grievance procedure.

b. Negotiated grievance procedure (NGP). (Ref: OCPMINST 12713.2; 30 Sep 92.) An employee covered by a collective bargaining agreement with an NGP which does not exclude allegations of discrimination may elect to pursue the matter under either the NGP or under the DON discrimination complaint procedure. Only one procedure may be selected.

c. Discrimination complaint procedure. (Ref: 29 C.F.R. Part 1614; OCPMINST 12713.2 of 30 Sep 92.) Civilian employees who elect to bring a complaint of sexual harassment through the discrimination complaint procedure must do so within 45 days of: the alleged act; the effective date of a personnel action arising from the act; or the date the complainant knew or should have known the alleged act occurred. A complaint must first be brought to the attention of an Equal Employment Opportunity (EEO) counselor who will look into the matter and attempt to resolve it. The counselor may have from 30 to 90 days to attempt resolution. If resolution is not reached, the complainant is advised of the right to file a formal complaint. If a formal complaint is filed and accepted, it will be investigated by a party outside the chain of command of the activity where the complaint arose. Several levels of appeal exist under Federal discrimination complaint procedures including: request for Secretary of the Navy (SECNAV) decision, with or without a hearing; appeal from a SECNAV decision to the EEOC Office of Federal Operations; and appeal to Federal District Court. The following summarizes pertinent milestones (all days are calendar days):

- Complainant must contact EEO Counselor within 45 days of occurrence, personnel action, or knowledge.
- EEO Counselor has 30 days to complete factfinding/informal resolution efforts (up to 90 days if the activity has an alternative dispute resolution program in place).

- Complainant has 15 days to file formal complaint; Navy has 180 days to investigate; Complainant can file civil action any time after 180 days of filing complaint.
 - After receipt of investigative report, complainant has 30 days to request SECNAV decision (with or without hearing).
 - Complainant has 30 days from receipt of SECNAV decision to appeal to EEOC.
 - Complainant has 90 days from receipt of EEOC decision to file civil action.
- d. **Appeals to Merit Systems Protection Board (MSPB)**. (Ref: CPI 713 and 5 C.F.R. Part 1201.) An allegation of discrimination raised by an individual eligible to appeal to the MSPB in connection with a personnel action otherwise appealable to MSPB (e.g., suspension of more than 14 days, demotion, removal) is considered a "mixed case." Employees not in a bargaining unit must elect either to have MSPB consider the allegation of discrimination as part of a mixed case appeal and process both under MSPB procedures, or have the allegation of discrimination processed under EEOC procedures, but not both. Individual NGP's determine whether bargaining unit employees have the alternative of filing a grievance concerning the matter appealable to MSPB that includes an allegation of discrimination under the NGP. If so, such employees may request the MSPB to review the final decision with appeal to the EEOC.

e. **Civilian Employee Assistance Program (CEAP)**. (Ref: OCPMINST 12792.1 (CPI 792).)

(1) In DON the Office of Civilian Personnel Management (OCPM) is responsible for developing and maintaining appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and/or drug problems. Assistance is also provided for other emotional problems that impact adversely on job performance. Program services may also be extended, to the extent feasible, to families of employees who have drug or alcohol problems and employees with family members who have alcohol or drug problems.

(2) The basic functions of a CEAP are:

- (a) short term counseling related to problem identification;
- (b) referral for treatment and rehabilitation to an appropriate community service or professional resource (treatment not at Government expense); and

(c) follow-up to aid an employee in achieving an effective readjustment to his/her job during and after treatment.

(3) The supervisor or manager plays a very important role in a CEAP. Whenever a supervisor becomes aware that an employee's personal problem(s) may be contributing to a performance or conduct deficiency, the supervisor should discuss the deficiency with the employee and recommend and refer the employee to the agency counseling program if, in the supervisor's opinion, noted deficiencies may be caused by a personal problem. Supervisors and managers should refrain from diagnosing employee problems, but be alert to indications of personal problems, including alcohol and drug abuse. Supervisors should contact their servicing Human Resources Office for assistance in these matters.

f. **Possible management support services for offending persons.** Certain other assistance might be available. The EEO office can provide information.

g. **Communications with Congress.** Civilian employees have the right to communicate with their congressional representatives on issues of concern to them.

5. **Special considerations for crime victims and witnesses**

a. References

(1) SECNAVINST 5800.11, Protection and Assistance of Crime Victims and Witnesses.

(2) OPNAVINST 1752.1, Rape Prevention and Victim Assistance.

b. The cognizant Sexual Assault Coordinator and/or Command Victim/Witness Assistance Coordinator will ensure compliance with applicable guidance to protect, assist, and support crime victims and witnesses; help mitigate any physical, psychological, and financial hardships which they might suffer; and provide access to appropriate counseling and advice as to applicable rights.

c. Victims will be made aware of available supportive resources and applicable rights. Best efforts should be made to ensure that victims are--

- treated with fairness and with respect for the victim's dignity and privacy;
- informed of the availability of medical assistance;
- reasonably protected from the accused;
- notified of status of the investigation, apprehension and pre-trial detention of the accused, referral and referral of charges, plea agreements;
- notified of court proceedings/afforded the opportunity to attend those open to the public;

- informed about conviction, sentencing, imprisonment, and release of the accused.
- d. Note that criminal sanctions for intimidation and harassment of a witness or victim, obstruction of justice, and communicating threats exist under the UCMJ and many civilian laws.

Chapter 6

SUMMARY OF THE INFORMAL RESOLUTION SYSTEM (IRS)

1. **Background.** The IRS was initiated by SECNAV to help resolve interpersonal conflicts at the lowest possible level. Although originally conceived as a tool to address sexual harassment, the IRS' was expanded to encompass any form of discrimination, harassment, or other inappropriate behavior.
2. **IRS concept and goals:** provide necessary information and skills to encourage/facilitate resolving interpersonal conflicts in the workplace at the lowest possible level.
 - a. IRS is most effective at resolving conflicts which aren't criminal in nature.
 - b. Emphasizes core values: Honor, Courage, Commitment.
 - c. Emphasizes each person's responsibility to be role model of appropriate behavior and confront inappropriate behavior when observed or brought to his/her attention.
3. **Individual responsibilities.** In general, each individual's responsibilities are--
 - a. **Do not ignore;**
 - b. **Review options;** and
 - c. **Take action to resolve.**
4. **The IRS is comprised of 3 sections:** behavior zones (3 zones), roles (4 roles), resolution options (3 options).
 - a. **Behavior Zones** (based on "reasonable person" standard)
 - (1) Red. Always unacceptable, e.g., seeking sexual favors in return for favorable evaluation, making supervisory decisions based on race/gender, "hate" mail, rape, assault.
 - Clearly criminal behavior must be reported through official channels.
 - Non-criminal red zone, if resolved and recipient does not desire further action, should merely be reported for supervisor's information.

(2) Yellow. Inappropriate to most people. Racial/sexual slurs, comments, jokes, sexually suggestive touching. If repeated, especially after being told of its offensiveness, turns to red and becomes definitely unacceptable.

(3) Green. Always acceptable, e.g., counseling on performance, military appearance, normal social interaction, polite compliment, friendly conversation.

b. Roles

(1) Recipient. One who feels offended/harassed.

(2) Offending person. One who may have offended/harassed another.

(3) Other person. One approached by recipient or by offending person or who observes inappropriate behavior.

(4) Supervisor. Anyone who has subordinates, regardless of grade or rank, and who is approached by any of the above three (or who himself/herself observes inappropriate behavior).

c. Resolution options (under IRS)

(1) Direct--recipient attempts to resolve conflict directly with offending person.

(2) Informal 3rd party--recipient (or offending person) enlists the informal assistance of some other person to help resolve the conflict.

(3) Training Information Resource (TIR)--generic, non-accusatory command training.

- may be requested anonymously
- TIR coordinator notifies CO
- CO determines if TIR appropriate to address issue

5. Use of the IRS may obviate the need for formal resolution, but formal complaint may still be pursued even if IRS also used.

a. For military members, formal resolution includes--

(1) Request mast (when the recipient is not satisfied with informal resolution);

(2) Disciplinary complaint; or

- (3) Art 138/NAVREGS 1150 complaint.
 - b. For civilian employees, formal resolution includes--
 - (1) Administrative grievance;
 - (2) Negotiated collective bargaining contract provisions (where applicable);
 - (3) Discrimination complaint process. (Note: civilians who wish to pursue this option must contact an EEO Counselor w/in 45 days of the complained-about event.)
 - c. Formal resolution is mandatory for all clearly criminal red-zone behavior; also non-criminal red zone, if unresolved or if informal resolution unacceptable to recipient.
6. **Commander's responsibilities under the IRS--**
- a. **Set the example.**
 - b. **Establish command climate** that allows and encourages individuals to resolve conflicts between themselves without fear of reprisal. (Reprisal can be as simple as ostracizing those involved or taking overt or covert action, e.g., a bad evaluation "out of the blue.")
 - c. **Keep an open mind**--listen and do not filter.
 - d. **Do not ignore.**
 - e. **Know when to get involved and when not to** (if IRS working, give it a chance to resolve).
 - (1) Determine if the IRS has been used; if not, encourage if appropriate.
 - (2) Do not get involved when conflict is being resolved by those directly involved.
 - (3) Intervene when necessary. Get involved when--
 - You are approached by recipient, offending person, or another person;
 - You observe inappropriate behavior; or
 - You are otherwise made aware of a situation which can't be resolved.

(4) Take or support actions to reach resolutions. Provide resource materials as appropriate.

(5) In any case, follow up and provide feedback.

f. **Report/take action on all criminal red zone behavior.**

g. **Avoid further traumatizing recipients**--e.g., if you need to physically separate personnel, whenever feasible move the offending person, not the recipient.

h. **Make referrals to support services as warranted.**

7. **IRS is supported by three elements--**

a. **IRS Skills Booklet** (copy provided as appendix F of this Handbook)

- stand alone "How to" guide
- resource to augment IRS lesson plan
- introduce IRS elements
- empower reader to implement system to resolve conflict at lowest level

b. **Training Information Resource Library (TIR)**

- to be established at selected DON locations worldwide
 - 85 Navy, 4 OCPM, 25 USMC
- 14 item (USN) bibliography (books/videos) (appendix G of this Handbook)
- Standard stock posters also available (NP-15626, SN 0500LP5432700)

c. **Series of lesson plans**

- Senior leadership (30 minutes)
 - flag officers, SES, CO's (O-5/above), CMC's
 - emphasize need for senior support
- Mid level (2 hours)
 - all MILPERS/CIVPERS not senior/entry level
 - provide full understanding/working knowledge of IRS
- Entry level (45 minutes)
 - within 90 days of accession
 - basic understanding and awareness of IRS

d. **IRS Case Studies.** See appendix K of this Handbook.

Chapter 7

OPTIONS FOR CORRECTING CIVILIAN OFFENDERS

1. **Close case as unfounded.** While it is mandatory that all reported incidents of sexual harassment be promptly investigated to sufficiently develop the facts necessary to support an informed disposition, it is perfectly appropriate to make an informed, considered decision to take no action against an alleged offender when a complaint has been determined to be unfounded after adequate inquiry. (As always, however, the pertinent facts and decisions relating to such a disposition should be appropriately preserved in command records for future reference.)
2. **Recommend that the individuals involved attempt to use the Informal Resolution System (IRS) to resolve their conflict.** (This option is not appropriate for clearly criminal "Red zone" behavior.) Follow-up is crucial--this is not a final resolution. (If an IRS resolution is effected, see 3 below; if not, review other options.)
3. **Ratify actions already taken under the IRS to resolve complaint.** Unless the conduct is clearly criminal in nature, it is within the CO/OIC/activity head's discretion to forego taking further formal action when a complaint has been resolved under the IRS and the complainant does not desire further action. In such event the CO/OIC/activity head should provide such supplemental support and resource materials as may be appropriate (such as granting a request to provide Training Information Resources (TIR)), monitor and follow-up as necessary, and provide feedback. The CO/OIC/activity head should also ensure that the circumstances surrounding such a disposition are adequately documented in local records in the event of subsequent inquiries.
4. **Counseling.** The supervisor should always document any counseling (at least in his/her own personal files) for possible future reference.
5. **Civilian Employee Assistance Program (CEAP).** (Ref: OCPMINST 12792.1 (CPI 792).) In addition to developing and maintaining appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and/or drug problems, CEAP may also offer assistance for other emotional problems that impact adversely on job performance. Program services may also be extended, to the extent feasible, to families of employees who have drug or alcohol problems and employees with family members who have alcohol or drug problems.
 - a. The basic functions of a CEAP are:
 - (1) short term counseling related to problem identification;

(2) referral for treatment and rehabilitation to an appropriate community service or professional resource (treatment not at government expense); and

(3) follow-up to aid an employee in achieving an effective readjustment to his/her job during and after treatment.

b. The supervisor or manager plays a very important role in a CEAP.

Whenever a supervisor becomes aware that an employee's personal problem(s) may be contributing to a performance or conduct deficiency, the supervisor should discuss the deficiency with the employee and recommend and refer the employee to the agency counseling program if, in the supervisor's opinion, noted deficiencies may be caused by a personal problem. Supervisors and managers should refrain from diagnosing employee problems, but be alert to indications of personal problems, including alcohol and drug abuse. Supervisors should contact their servicing Human Resources Office for assistance in these matters.

6. **Performance appraisals** (CPI 430 (GS-1 to GS-18); CPI 540 (GM-13 to GM-15); OCPMINST 1292.1 (SES)). ALNAV 70/91 and OFFCPM ARLINGTON VA 241414Z JUN 91 implemented mandatory EEO critical element/work plan objective per the following model--

a. For supervisory employees (all levels)--

- Above Fully Successful/Outstanding: Proactive in preventing discriminatory behavior, sexual harassment, and associated discrimination complaints.
- Fully Successful: Stops discriminatory behavior and sexual harassment in subordinate workforce, assists in resolving discrimination complaints
- Below Fully Successful/Unacceptable: Failed to act to stop known discriminatory behavior in subordinate workforce. EEO investigation supports finding of discrimination.

b. For nonsupervisory employees (all SES; GM-13 to GM-15 whose duties may influence EEO goals/objectives)--

- Above Fully Successful/Outstanding: Identifies barriers to the employment and advancement of target group employees (under-represented minorities, women, or disabled) and methods of eliminating those barriers. Identifies and implements innovations in own functional area which materially contribute to the achievement of EEO goals and objectives.

- Fully Successful: Maintains up-to-date knowledge of EEO goals/objectives and sexual harassment guidelines, personally supports/advocates achieving them.
- Below Fully Successful/Unacceptable: Support of EEO is limited to passive acceptance of EEO goals and attending special events or meetings when mandated by higher authority.

7. **Security clearance/PRP adjustment or withdrawal** (OPNAVINST 5510.1H; OPNAVINST 5510.162). May be taken when questions are raised about employee's trustworthiness or loyalty (e.g., alcohol/drug abuse, sexual misconduct, other behavior indicating poor judgment or lack of reliability). Right to notice and opportunity to comment. Action may ultimately affect pay and career status.

8. **Oral or written admonition**. Not made a part of employee's official record. Supervisor retains memorandum of oral admonition or copy of written admonition in supervisor's personal files usable only in subsequent disciplinary actions where prior counseling might be relevant.

9. **Disciplinary or corrective personnel action**. OCPMINST 12713.2 requires that disciplinary and/or corrective action be considered when a determination is made that prohibited discrimination has occurred. See also OCPMINST 12752.1.

a. **Corrective action**. Includes reassignment from a position with personnel program responsibilities and/or EEO training.

b. **Disciplinary action**. Per OCPMINST 12752.1 the recommended remedies for sexual harassment (or other discrimination) range from reprimand to removal from Federal service. Similar remedies are suggested for failure to follow local or higher level policy, notoriously disgraceful conduct, making threats to other employees, committing a prohibited personnel practice, or unauthorized disclosure of personal information. Lesser remedies are suggested for disrespectful conduct or use of insulting, abusive, or obscene language to or about other personnel.

(1) A copy of the Schedule of Offenses and Recommended Remedies from OCPMINST 12752.1 is provided as appendix H to this Handbook.

(2) Unlike an admonition, a formal reprimand will be placed in the employee's official record.

(3) Employees have a right to an MSPB appeal of suspension for over 14 days and termination.

10. Criminal prosecution

- a. Many forms of sexual harassment may also constitute criminal violations under state or Federal law. Rape is a crime in all States. Bribery, graft, and conspiracy are offenses in most jurisdictions. The use of foul language may constitute "disorderly conduct." Unauthorized touching is a common law battery. New laws dealing with "stalking" may also apply to some sexual harassment cases.
- b. Potential criminal prosecutions should be coordinated in advance with the Naval Criminal Investigative Service (see SECNAVINST 5520.3B and SECNAVINST 5822.1B) or the cognizant judge advocate or other legal counsel servicing the command.

Chapter 8

OPTIONS FOR CORRECTING MILITARY OFFENDERS

I. DISMISS CASE AS UNFOUNDED

While it is mandatory that all reported incidents of sexual harassment be promptly investigated to sufficiently develop the facts necessary to support an informed disposition, it is perfectly appropriate to make an informed, considered decision to take no action against an alleged offender when a complaint has been determined to be unfounded after adequate inquiry. (As always, however, the pertinent facts and decisions relating to such a disposition should be appropriately preserved in command records for future reference.)

II. ADMINISTRATIVE ACTION

A commander may take or initiate administrative action, in addition to or instead of other action taken.

1. Recommend that the individuals involved attempt to use the Informal Resolution System (IRS) to resolve their conflict. (This option is not appropriate for clearly criminal "Red zone" behavior.) Follow-up here is crucial--this is not a final resolution. (If an IRS resolution is effected, see 2 below; if not, review the other options.)
2. Ratify actions already taken under the IRS to resolve complaint. Unless the conduct is clearly criminal in nature, it is within the CO/OIC/activity head's discretion to forego taking further formal action when a complaint has been resolved under the IRS and the complainant does not desire further action. In such event the CO/OIC/activity head should provide such supplemental support and resource materials as may be appropriate (such as granting a request to provide Training Information Resources (TIR)), monitor and follow-up as necessary, and provide feedback. The CO/OIC/activity head should also ensure that the circumstances surrounding such a disposition are adequately documented in local records in the event of subsequent inquiries.
3. Nonpunitive measures. (See JAGMAN 0102-0105.) "Nonpunitive measures" refers to various leadership techniques which can be used to develop acceptable behavioral standards in members of a command. Nonpunitive measures include counseling, exhortation, nonpunitive censure, extra military instruction (EMI), and administrative withholding of privileges. CO/OIC/activity heads are authorized and expected to use nonpunitive measures to further the efficiency of their command. (Do not, however, use nonpunitive measures as a means of informal punishment.)

- a. **Counseling**. The supervisor should always document any counseling (at least in his/her own personal files) for possible future reference.
- b. **Nonpunitive letter of caution**. (See JAGMAN 0105.) This is nothing more than a written "chewing out." A sample is set forth in JAGMAN Appendix A-1-a. Being private in nature, such letters may not be forwarded to BUPERS, nor may such letters be quoted in or appended to fitness reports or evaluations, included as enclosures to JAG Manual or other investigative reports, or otherwise included in the official departmental records of the recipient. However, the deficient performance of duty or other facts which led to a letter of caution being issued may be mentioned in the recipient's next fitness report/evaluation.
- c. **Extra military instruction (EMI)**. (See JAGMAN 0103; OPNAVINST 3120.32B.) EMI is the practice of assigning extra tasks to a servicemember exhibiting behavioral/performance deficiencies for the purpose of correcting those deficiencies through the performance of the assigned tasks. All EMI involves an order from a superior to a subordinate to do the task assigned. However, orders imposing punishment are unlawful and need not be obeyed unless issued pursuant to nonjudicial punishment or court-martial sentence. Thus, EMI must entail a valid training purpose and should always involve the identification of a particular character deficiency and the assignment of a task rationally related to that deficiency.
- (1) **Hours, duration**. The overall duration of EMI should be limited to a period of time required to correct the deficiency. Limit EMI to no more than two hours per day (and do not require EMI on the individual's Sabbath). Since EMI is training, it can lawfully interfere with normal hours of liberty, but take care not to assign EMI at unreasonable hours. What "reasonable hours" are will differ with the normal work schedule of the individual involved, but no great interference with normal hours of liberty should be involved. Upon completing each day's instruction the member should be allowed normal limits of liberty.
- (2) **Authority to assign**. The authority to assign EMI to be performed during working hours is inherent in authority vested in officers and petty officers. The authority to assign EMI to be performed after working hours rests in the CO/OIC, who may delegate it, but normally not below the CPO (E-7) level. However, in exceptional cases, as where a qualified petty officer is filling a CPO billet in a unit which contains no CPO, authority may be delegated to a mature senior petty officer.
- d. **Denial of privileges**. (See JAGMAN 0104.) A "privilege" is a benefit provided for the convenience or enjoyment of an individual. Examples of privileges that may be withheld include special liberty, 72-hour liberty, exchange of duty, special command programs, hobby shops, parking privileges, and access to movies or clubs. Final authority to withhold a privilege, even temporarily, rests with the level of authority empowered to grant that privilege. Therefore, authority of officers and petty

officers to withhold privileges is, in many cases, limited to recommendations via the chain of command. Officers and petty officers are authorized and expected to initiate such actions when considered appropriate to remedy minor infractions in order to further efficiency of the command. Authority to withhold privileges may be delegated, but in no event may the withholding of privileges, either by the CO, OIC, or some lower echelon, be tantamount to a deprivation of liberty itself.

(1) Normal liberty is technically a "privilege," but custom and regulation permit the deprivation of liberty only for certain recognized grounds. Those include authorized pretrial restraint, or deprivation of normal liberty in a foreign country or in foreign territorial waters, when such action is deemed essential for the protection of the foreign relations of the United States, or as a result of international legal hold restriction. Moreover, it is permissible to require persons in the naval service to remain at work outside of normal working hours to finish work assignments which should have been completed during normal working hours, or for the accomplishment of additional essential work, or for the achievement of the currently-required level of operational readiness.

(2) Other grounds for deprivation of liberty include the health or safety of the individual or the public. (This could constitute a proper basis for ordering a military member into the barracks/ship when his/her spouse reports an assault.)

(3) Alternative voluntary restraint (often called "hack") is a device whereby a superior offers not to report an offense or not to impose punishment in return for a promise by the subordinate not to take normal liberty and to remain on base or aboard ship. Such a procedure is not authorized by the UCMJ, MCM, or JAGMAN, and its use can place the commander in a tenuous position because such agreements are unenforceable and could preclude the later imposition of nonjudicial punishment or court-martial should the command later desire to take official disciplinary action.

e. **Letter of instruction (LOI)**. Written communication to a member identifying actions necessary to improve. LOIs provide evidence of the timing and focus of counseling and should describe specific weaknesses, recommend suitable and reasonable measures for improvement, clearly establish the desired performance standard, and if appropriate, establish a period of time for correction of the performance deficiency. The fact that an LOI has been issued may be duly noted in a FITREP. (See MILPERSMAN 3410105.4 and BUPERSINST 1611.17, article 1-12.)

4. **FITREPS and EVALS**. Strengths/weaknesses for performance related to sexual harassment issues should be appropriately documented in personnel records, including regular or special FITREPs or EVALs. Pertinent considerations include--

a. Officer Fitness Reports. (See BUPERSINST 1611.17.)

(1) Block 33, Navy Organization Support

- Supports the policies and decisions of higher authority.
- Supports the authority and capabilities of subordinates.
- Promotes the welfare and effectiveness of the entire command.
- Effectively implements Navy and DoD special interest programs and management improvement initiatives.

(2) Block 35, Equal Opportunity

- Is sensitive to minority and women's issues in planning and implementing personnel actions.
- Actively works to maintain an environment free of discrimination and sexual harassment.
- Initiates actions in support of the Navy's Command Managed Equal Opportunity (CMEO) program.
- For officers who manage civilian employees: Takes effective action to assess the EEO posture of the civilian work force, develop improvement goals and strategic plans, and monitor progress/evaluate performance in achieving EEO objectives.

(3) See BUPERSINST 1611.17, enclosure (1), paragraphs 1-12 and 2-13 (block 88), for guidance on reporting on misconduct, judicial proceedings, nonjudicial punishment (NJP), and nonpunitive administrative corrective measures.

b. Enlisted personnel

(1) Performance Evaluations. (See BUPERSINST 1616.9A.)

(a) Block 30, Reliability

- Supports Navy and command policies
- Displays high level of personal integrity

(b) Block 32, Personal Behavior

- Displays high standards of personal conduct both on and off duty
- Sociable, considerate, and tactful

(c) Block 33, Human Relations including EO

- Respects the feelings and dignity of others
- Is sensitive to minority and women's issues
- Helps to maintain an environment free of discrimination and sexual harassment

(d) See BUPERSINST 1616.9A, enclosure (1), paragraphs 1-11 and 2-11 (block 56), for guidance on reporting on misconduct, judicial proceedings, nonjudicial punishment (NJP), and corrective measures.

(2) NAVPERS 1070/613, Administrative Remarks (Page 13). (See MILPERSMAN 3610260.5, 5030200, 50304200.) Documentation of administrative counseling/warning may be appropriate and could be useful (if not necessary) to support subsequent actions.

5. Security clearance/PRP adjustment or withdrawal. (See OPNAVINST 5510.1H; OPNAVINST 5510.162.) May be taken when questions are raised about member's trustworthiness or loyalty (e.g., alcohol/drug abuse, sexual misconduct, other behavior indicating poor judgment or lack of reliability). Right to notice and opportunity to comment. Action may ultimately affect pay and career status.

6. Reassignment of duties.

7. Early transfer/delay of transfer. Early transfer need not always entail adverse records entries. Delay of transfer may be indicated when disciplinary action is pending, or when executing existing orders may no longer be appropriate.

8. Detachment for Cause (including detachment for cause of an officer in command). Entails transfer prior to normal rotation date accompanied by adverse records entry. Factual basis required. Generally requires intra-command counseling and attempts to correct problem before initiation (except in cases involving loss of confidence in an officer in command). Final action is normally approved by CHNAVPERs following extensive due process procedures. (See MILPERSMAN 3410105.)

9. Separation processing

a. Per SECNAVINST 5300.26B --

(1) Military personnel must be processed for administrative separation on the first substantiated incident of sexual harassment involving any of the following circumstances:

(a) Action, threats, or attempts to influence another's career or job in exchange for sexual favors; or

(b) Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in a punitive discharge.

(c) Note: An incident is substantiated if there has been a court-martial conviction or if the CO/OIC determines that sexual harassment has occurred.

(2) CO's have the option to initiate administrative separation proceedings for reasons set forth in the appropriate service regulations for individuals whose conduct warrants separation not covered above.

(3) For officer separations, see SECNAVINST 1920.6A and MILPERSMAN 3410100.

(4) For enlisted separations, see MILPERSMAN Chapter 36.

III. DISCIPLINARY ACTION

1. **Refs:** Article 15, Uniform Code of Military Justice (UCMJ)
Part V, Manual for Courts-Martial, 1984 (MCM)
Part B, Chapter I, Manual of the Judge Advocate General, JAGINST 5800.7C (JAGMAN)
U.S. Navy Regulations, 1990 (NAVREGS)
2. **Offenses.** Sexual harassment constitutes an offense under UCMJ Article 92(1) for violation of the lawful general order promulgated by SECNAVINST 5300.26B. Alleging violations of this order should generally prove to be the most convenient and appropriate way to charge sexual harassment offenses. The UCMJ does contain other articles prohibiting sexual harassment or conduct related to sexual harassment, and charging other violations may be indicated where the conduct in question is particularly serious, or not adequately covered by SECNAVINST 5300.26B. Appendix I of this Handbook summarizes available options for charging sexual harassment (and related conduct) under the UCMJ. Prior coordination with the command legal advisor is highly recommended.

3. Nonjudicial punishment (NJP)

- a. **Nonjudicial punishment (NJP) in general.** NJP involves certain limited punishments which a commander, CO, or OIC can award to military members of his/her command for "minor" disciplinary offenses. NJP is authorized by Congress per Article 15 of the UCMJ and further implemented by the President in the MCM and by SECNAV in the JAGMAN. In the Navy, NJP is usually referred to as "captain's mast" or simply "mast." (Such "mast" is disciplinary, not to be confused with "request" mast under NAVREGS 1151 and 0820c or "meritorious" mast under NAVREGS 0820d.) "Admiral's mast" is NJP imposed by a flag officer in command wherein, in addition to certain increased punishments available, the prestige of higher authority underscores the seriousness of the proceedings. NJP is awarded by a

single officer, has few formal requirements, and is non-adversarial in nature. Although NJP is a disciplinary measure and includes a process for imposing certain prescribed punishments, NJP is nonetheless administrative in nature, is neither a judicial nor a criminal proceeding: any associated imposition of punishment does not constitute a "trial", "court-martial," or "conviction", nor does a dismissal of charges at most constitute an "acquittal." This is reflected in the legal protection afforded a member incident to NJP proceedings, which is more extensive than for nonpunitive measures but less extensive than for courts-martial. Permissible punishments vary depending on the grade/rank of the offender as well as the grade/rank and position of the officer imposing the NJP. (See attached chart.) The fact that a member has received NJP will be reflected in the member's service record, and could form the basis for such collateral consequences as administrative separation proceedings, lowered evaluations, etc.

b. **"Minor" offenses**

(1) Normally "minor offense" means misconduct no more serious than that usually handled at summary court-martial (where the maximum punishment is thirty days' confinement). The nature of the offense and the circumstances surrounding its commission are also factors which should be considered. "Minor offense" ordinarily does not include misconduct which, if tried by general court-martial (GCM), could be punished by a dishonorable discharge or confinement for more than one year.

(2) Final determination as to whether an offense is "minor", however, generally lies within the CO/OIC's sound discretion. Military criminal law encompasses both regulatory/disciplinary infractions and traditional crimes. Regulatory/disciplinary infractions involve breaches of standards governing the routine functioning of society, such as traffic laws, disobedience of military orders, disrespect to military superiors, etc. Traditional crimes, on the other hand, involve offenses commonly and historically recognized as threatening society's very core (such as robbery, rape, murder, aggravated assault, larceny, etc.). Both types of offenses involve violations of applicable law, but the traditional crimes usually entail a particularly reprehensible moral deficiency coupled with severe impact on the victims and/or society. For the most part, criminal acts are intrinsically serious. Disciplinary or regulatory offenses, however, may be serious or minor depending upon circumstances, so while such offenses may carry severe maximum penalties, the actual nature of some of these offenses may be sufficiently slight as to properly characterize the offenses as "minor."

c. **Authority to impose NJP.** NJP authority may only be exercised by a flag officer in command, CO or OIC, or by certain officers to whom the power has been delegated in accordance with SECNAV directives. The power to impose NJP is inherent in the office and not in the individual. Thus, the power may be exercised by

a person properly acting as an NJP authority, such as when the CO is on leave and the XO succeeds to command. (See NAVREGS 0801, 1074-1087; JAGMAN 0106.)

d. Limitations on power to impose NJP

(1) Once a person has received NJP, he/she may not receive further NJP for the same offense. This same provision precludes a superior from increasing punishment already imposed at NJP by a subordinate. (But if a case is initially dismissed without punishment being imposed, subsequent punishment for the dismissed offenses by the same or different CO/OIC would not be precluded.)

(2) NJP may not be imposed for an offense previously tried by court-martial or other Federal court. (See JAGMAN 0124.)

(3) NJP may not be imposed for an offense previously tried by a state or foreign court, or diverted out of the regular criminal process for a probationary period, or adjudicated by juvenile court authorities, unless authority is first obtained from the officer exercising GCM jurisdiction (usually the general or flag officer in command over the command desiring to impose NJP). (See JAGMAN 0124.)

(4) NJP may not be imposed more than two years after the commission of the offense. (See article 43(b)(2), UCMJ.)

e. Persons upon whom NJP may be imposed

(1) Members of the command. A CO may impose NJP on all active duty naval military personnel assigned to the command at the time NJP is imposed. An OIC may impose NJP only upon assigned enlisted members. A person is "of the command or unit" if he/she is assigned or attached thereto; this includes TAD personnel (who may be punished either by the CO of the unit to which they are TAD or by the CO of the duty station to which they are permanently attached). Special rules and limitations may apply to a "party" to a JAG Manual investigation, multi-service commands, and units embarked on vessels. (See NAVREGS 0720-0722; JAGMAN 0106-0108; MILPERSMAN 1860320.5.)

(2) Right of the accused to "demand trial by court-martial". Except in the case of a person attached to or embarked in a vessel, an accused may refuse NJP. (Although often referred to as a right to "demand court-martial," such a refusal does not require that charges be referred to a court-martial--referral is optional with the convening authority. (See NAVREGS 1101; JAGMAN 0108c.)

(3) Reservists. (See article 3, UCMJ; JAGMAN 0107b, 0112, 0123; MILPERSMAN 3420320.) Reservists on active duty or inactive duty training (IDT) are subject to the UCMJ and therefore to the imposition of NJP (with some limitations).

(a) A Reserve who is subject to the UCMJ at the time he/she commits an offense in violation of the UCMJ remains subject to NJP (or court-martial proceedings) notwithstanding termination of his/her active duty/IDT before the allegation is resolved.

(b) NJP may be imposed during the active duty/IDT when the misconduct occurred;

(c) NJP may be imposed at a subsequent period of active duty/IDT (within 2 years of the offense);

(d) A Regular component officer exercising GCM jurisdiction over the accused may involuntarily recall the accused to AT/IDT for purposes of imposing NJP (SECNAV authority is required for certain punishments); or

(e) If the accused waives his/her right to be present at the NJP hearing, NJP may be imposed after the AT/IDT has ended.

(f) Certain limitations on punishment apply (see attached chart).

(4) NJP may not be imposed on a civilian.

f. **Procedures.** The NAVPERS 1626/7 typically is used as both the investigation report as well as a record of the processing of the NJP case. The CO/OIC must ensure the accused is properly advised of and accorded appropriate rights, including the opportunity for a hearing. Part B of Chapter 1 of the JAGMAN and appendices A-1-b through A-1-g contain detailed guidance and forms. There is no obligation to provide lawyer counsel at mast, but the accused may be represented by a personal representative, who could be a lawyer if willing and available to appear at the hearing. Regardless of whether a personal representative is present, the CO/OIC controls the course of the hearing and should not allow the proceedings to deteriorate into a partisan adversarial atmosphere. The CO/OIC must impartially consider all reasonably available evidence. Any decision that the accused is "guilty" need only be based upon the preponderance of the evidence (not the stricter "beyond reasonable doubt" standard required in criminal trials).

g. **At mast the CO or OIC inquires into the facts, affords the accused a hearing, and may dispose of such charges via one of the following --**

(1) **Dismissal with or without warning.** This action normally is taken if the CO/OIC is not convinced by the evidence that the accused is guilty of an offense, or decides that no punishment is appropriate in light of his/her past record and other circumstances. Dismissal, whether with or without a warning, is not considered NJP and will not be reflected in the accused's service record.

(2) Referral to summary or special court-martial (CO only) or pretrial investigation under Article 32, UCMJ (prerequisite for a general court-martial).

(3) Referral of the case to a superior authority for disposition (e.g., for admiral's mast or other action beyond the hearing officer's authority).

(4) Postponement of action (pending further investigation or for other good cause, such as a pending trial by civil authorities for the same offenses). In effect the mast is adjourned to be completed (by another of these actions) at a later date.

(5) Imposition of NJP (see attached chart for authorized punishments).

(6) Suspension of some or all punishment. Suspension withholds execution of an imposed punishment for a stated period of time.

(a) Note that even if all punishment is suspended, the proceeding still is considered NJP and will still be reflected in the accused's service record.

(b) The probationary period cannot exceed six months from the date of suspension. Suspension includes an implied condition that the servicemember not commit an offense under the UCMJ. The NJP authority who imposed punishment may specify in writing additional conditions on the suspension. At the end of the probationary period, the suspended portions of the punishment are remitted automatically unless sooner vacated. The running of the period of suspension will be interrupted, however, by the unauthorized absence of the accused or the commencement of any proceeding to vacate the suspended punishment.

(c) Vacation is the process of canceling the suspension for cause and imposing the suspended punishment. Vacation of the suspended punishment may be effected by any CO/OIC of the person punished who has the authority to impose the kind and amount of punishment to be vacated. Vacation of a suspension is not punishment for the misconduct that triggers the vacation. Accordingly, a member may receive separate punishment for the subsequent misconduct in addition to vacation of prior punishment. Vacation proceedings are often handled at NJP. First, the suspended punishment is vacated; then the CO can impose NJP for any new offense (but not for a violation of a condition of suspension unless it is itself a violation of the UCMJ). If NJP is imposed for the new offense, the accused must be afforded all of his/her hearing rights, etc. The order vacating a suspension must be issued within ten working days of the commencement of the vacation proceedings and the decision to vacate the suspended punishment is not appealable as an NJP appeal. (See JAGMAN 0118d.)

PUNISHMENT LIMITATIONS UNDER ARTICLE 15, UCMJ – NAVY

Imposed by	Imposed on	Confinement on B&W or DMRATS (1,10,11,14)	Correctional Custody (2,10,11,14)	Arrest in Quarters (3, 10, 11)	Forfeitures	Reduction	Extra Duties (7, 10)	Restriction to Limits (7, 12)	Admonition or Reprimand (4, 13)
Flag Officers in Command	Officers E-4 to E-9	No	No	30 days	1/2 of 1 mo. for 2 mos.	No	No	60 days	Yes
CO's (O-4 to O-6)	Officers E-1 to E-3	3 days	30 days	No	1/2 of 1 mo. for 2 mos.	1 grade	45 days	60 days	Yes
O-3/below and All OIC's (8)	Officers E-4 to E-9	No	No	No	No	No	No	30 days	Yes
	Officers E-1 to E-3	3 days	30 days	No	1/2 of 1 mo. for 2 mos.	1 grade	45 days	60 days	Yes
	Officers E-4 to E-9	No	No	No	No	No	No	15 days (9)	Yes
	Officers E-1 to E-3	3 days	7 days	No	7 days	1 grade	14 days	14 days	Yes

- (1) May be awarded only to members attached to/embarked in a vessel; may not be combined with any other restraint punishment or extra duties.
- (2) See SECNAVINST 1640.7C; may not be combined with restriction or extra duties.
- (3) Applies only to officers; a mural restraint, similar to restriction, but with narrower limits (but see NAVREGS 1103.1); may not be combined with restriction. (JAGMAN 0111a)
- (4) May be imposed in addition to or in lieu of all other punishments.
- (5) Shall be expressed in whole dollar amounts only. For Reserves ordered to active duty for punishment and released prior to collection of all forfeitures, see DODPM, Pt. 7, chs. 5 and 6.
- (6) CPO's (E-7 through E-9) may not be reduced at NJP. (MILPERSMAN 3420140.2)
- (7) Restriction and extra duties may be combined to run concurrently but duration limited to maximum possible for extra duties; for limitations on restriction of officers, see NAVREGS 1103.1.
- (8) OIC's (regardless of rank) only have NJP authority over enlisted personnel.
- (9) Restriction imposed upon commissioned and warrant officers may not exceed 15 consecutive days when imposed by a CO below O-4 (JAGMAN 0111a)
- (10) May not be imposed on Reserves during IDT. (JAGMAN 0112a(4))
- (11) For Reserves involuntarily recalled to active duty for punishment [JAGMAN 0112, SECNAV approval required for restraint punishments. SECNAV approval also required for any extensions of such active duty for the purpose of serving such punishment.]
- (12) Moral restraint only. For Reserves restricted during a normal period of active duty training or inactive duty training, the restraint may not extend beyond the normal termination of the training period. This provision does not preclude a "carry-over" of awarded but unexecuted restraint to a later period of active duty training or inactive duty training. (JAGMAN 0112a)
- (13) Reprimand is considered more severe than admonition. Punitive censure for officers must be in writing, although it may be either oral or written for enlisted personnel. Procedures for issuing punitive letters are detailed in JAGMAN 0114 and app. A-1-g. See also SECNAVINST 1920.6.
- (14) If JAGMAN 0113b permits, a CO/QJC to defer imposition for up to 15 days when adequate facilities not available, exigencies of the service so require, or the accused is found to be not physically fit for the service of these punishments.

GENERAL NOTES

- Unless suspended, punishments generally take effect when imposed. Punishment must still be served pending any appeal, except that, if action is not taken on the appeal within 5 days, and if the member so requests, any unexecuted punishment of restraint or extra duties shall be stayed during the appeal.
- Punishment may not be suspended for more than six months.

4. Summary court-martial

- a. CO's may convene.
- b. Not a "real" criminal trial in every sense; accused not entitled to counsel; consists of a single commissioned officer (no military judge or government counsel).
- c. Cannot try officers.
- d. Enlisted have absolute right to refuse.
- e. Very limited punishment.

5. Special court-martial (SPCM)

- a. CO's may convene.
- b. A criminal trial in every sense--accused has full rights to counsel; presided over by military judge; both sides have right to compulsory process for production of witnesses and evidence.
- c. Accused has right to members (minimum of 3) or may request trial by military judge alone. Enlisted accused has right to at least 1/3 enlisted members.
- d. Maximum punishment--

(1) Enlisted--

- Written reprimand
- Restriction for 2 months
- Hard labor without confinement for 3 months
- Forfeiture/fine of 2/3 pay per month for 6 months
- Bad-conduct discharge
- Reduction to lowest pay grade
- Confinement for 6 months

(2) Officers--

- Written reprimand
- Loss of numbers
- Restriction for 2 months
- Forfeiture/fine of 2/3 pay per month for 6 months
- Note: confinement not authorized

6. **General court-martial (GCM)**

- a. A GCM is the most serious type of court-martial.
- b. Article 32, UCMJ requires a pretrial investigation before a case can be referred to a GCM.
 - (1) Similar to grand jury investigation.
 - (2) CO's can convene Art 32 investigations.
 - (3) Function: determine if probable cause to believe accused committed offense and recommend appropriate disposition.
 - (4) Accused has right to counsel, call and question witnesses, present evidence, make a statement/remain silent.
 - (5) Recommendations of investigating officer not binding on convening authorities.
- c. Only flag officers in command (and a very few specially-designated CO's) can convene GCMs (see JAGMAN 0120). Other CO's may refer the case to the appropriate GCM authority.
- d. A GCM is also a full-blown criminal trial with all the aspects of a SPCM, plus--
 - (1) Accused has right to members (minimum of 5) or may request trial by military judge alone. Enlisted accused has right to at least 1/3 enlisted members.
 - (2) No limitations on sentence--even death possible (maximum determined by maximum for offenses); officers may receive confinement and/or dismissal.

Appendix A

SECNAVINST 5300.26B Department of the Navy (DON) Policy on Sexual Harassment

In order to assemble a complete copy of this Handbook, please insert a copy of the following material (which should be readily available at all commands) as this appendix--

**SECNAVINST 5300.26B, Department of the Navy (DON)
Policy on Sexual Harassment**

Appendix B

**OPNAVINST 5370.2A
Navy Fraternization Policy**

In order to assemble a complete copy of this Handbook, please insert a copy of the following material (which should be readily available at all commands) as this appendix--

OPNAVINST 5370.2A, Navy Fraternization Policy

Appendix C
Commander's Handbook

ROUTINE

UNCLASSIFIED

INCOMING

ADMINISTRATIVE MESSAGE

ROUTINE

R 252126Z JAN 93 ZEX ZYB PSN
132753L21

FM SECNAV WASHINGTON DC//SN//

TO ALNAV

UNCLAS //N05800//

ALNAV 013/93

MSGID/GENADMIN/N09BL//
SUBJ/U.S. NAVY REGULATIONS 1990
ADVANCE CHANGE 1//

REF/A/DOC/CNO/14SEP90//

AMPN/REF A IS THE UNITED STATES NAVY
REGULATIONS 1990 ARTICLE 1165
FRATERNIZATION; AND ARTICLE 1166
SEXUAL HARASSMENT//

RMKS/1. PENDING FORMAL AMENDMENT TO
REF A THIS ADVANCE CHANGE 1
REPLACES ARTICLE 1165
FRATERNIZATION; AND ARTICLE 1166
SEXUAL HARASSMENT.

2. ARTICLE 1165 OF REF A IS AMENDED
BY REPLACING IT WITH THE FOLLOWING:
FRATERNIZATION PROHIBITED.

1. PERSONAL RELATIONSHIPS
BETWEEN OFFICER AND ENLISTED MEMBERS
THAT ARE UNDULY FAMILIAR AND THAT DO
NOT RESPECT DIFFERENCE IN GRADE OR
RANK ARE PROHIBITED. SUCH
RELATIONSHIPS ARE PREJUDICIAL TO
GOOD ORDER AND DISCIPLINE AND
VIOLATE LONG-STANDING TRADITIONS OF
THE NAVAL SERVICE.

2. WHEN PREJUDICIAL TO GOOD
ORDER AND DISCIPLINE OR OF A NATURE
TO BRING DISCREDIT ON THE NAVAL
SERVICE, PERSONAL RELATIONSHIPS
BETWEEN OFFICER MEMBERS OR ENLISTED
MEMBERS THAT ARE UNDULY FAMILIAR AND
THAT DO NOT RESPECT DIFFERENCES IN
GRADE OR RANK ARE PROHIBITED.
PREJUDICE TO GOOD ORDER AND
DISCIPLINE OR DISCREDIT TO THE NAVAL
SERVICE MAY RESULT FROM, BUT ARE NOT
LIMITED TO, CIRCUMSTANCES WHICH:

- A. CALL INTO QUESTION A SENIOR'S OBJECTIVITY;
- B. RESULT IN ACTUAL OR APPARENT PREFERENTIAL TREATMENT;
- C. UNDERMINE THE AUTHORITY OF A SENIOR; OR
- D. COMPROMISE THE CHAIN OF COMMAND.

3. ARTICLE 1166 OF REF A IS AMENDED
BY REPLACING IT WITH THE
FOLLOWING:

SEXUAL HARASSMENT.

1. SEXUAL HARASSMENT IS
PROHIBITED.

2. NO INDIVIDUAL IN THE
DEPARTMENT OF THE NAVY SHALL:

- A. COMMIT SEXUAL HARASSMENT;
- B. TAKE REPRISAL ACTION AGAINST A PERSON WHO PROVIDES INFORMATION ON AN INCIDENT OF ALLEGED SEXUAL HARASSMENT;
- C. KNOWINGLY MAKE A FALSE ACCUSATION OF SEXUAL HARASSMENT; OR
- D. WHILE IN A SUPERVISORY OR COMMAND POSITION, CONDONE OR IGNORE SEXUAL HARASSMENT OF WHICH HE OR SHE HAS KNOWLEDGE OR HAS REASON TO HAVE KNOWLEDGE.

4. IN LIEU OF ENTERING THIS CHANGE IN REF A IN ITS ENTIRETY, MAKE A BOLD LETTER NOTATION AT THE BEGINNING OF ARTICLE 1165 AND ARTICLE 1166 OF REF A, "SEE SECNAV 013/93" AND FILE THIS ALNAV IN FRONT OF REF A.

5. RELEASED BY ADM F. B. KELSO II,
USN, ACTING.//
BT

Appendix D

SAMPLE POLICY STATEMENT

USS FAIR WINDS POLICY on PREVENTION OF SEXUAL HARASSMENT

Sexual harassment in the Federal Workplace is an unlawful employment practice and requires more sensitivity to the issue involving sexual harassment behavior. Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, or other physical or verbal conduct of a sexual nature when:

1. submission to or rejection of such conduct is made, either explicitly or implicitly, a part of a person's job, pay, or career; or
2. submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
3. such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

The "Reasonable Person Standard" will be used to determine if behavior constitutes sexual harassment. This objective standard considers what a reasonable person's reaction would have been under similar circumstances and in a similar environment. The reasonable person standard considers the recipient's perspective and not stereotyped notions of acceptable behavior. For example, a work environment in which sexual slurs, the display of sexually suggestive calendars, or other offensive sexual behavior abound can constitute sexual harassment even if other people might deem it to be harmless or insignificant.

Sexual harassment involves conduct that a reasonable person would find sexual in nature in light of the relevant facts and circumstances. Behavior does not need to be overtly sexual if it creates an offensive work environment. Examples include

sexist remarks or slurs, sexual advances, displays of pornographic material, touching, language, gestures, mannerisms, and similar behavior.

Sexual harassment is prohibited in the workplace or any other place that is work-connected, as well as the conditions or atmosphere under which people are required to work. Examples of work environment include, but are not limited to, an office, an entire office building, a DOD base or installation, DOD ships, aircraft or vehicles, anywhere when engaged in official DOD business, as well as command-sponsored social, recreational and sporting events, regardless of location.

No individual shall--

1. commit sexual harassment;
2. take reprisal action against a person who provides information on an incident of alleged sexual harassment (a reprisal is the wrongful threatening or taking of either unfavorable action against another or withholding favorable action from another solely in response to a report of sexual harassment (or other discrimination));
3. knowingly make a false accusation of sexual harassment; or
4. while in a supervisory or command position, condone or ignore sexual harassment of which he or she has knowledge or has reason to have knowledge.

These rules are regulatory orders, apply to all DON personnel individually without further implementation, and may be enforced through punitive, disciplinary, or administrative action under military or civilian systems, including punishment for violation of a lawful general order under Article 92 of the UCMJ.

Reports of sexual harassment will be investigated and disciplinary action will be swift in substantiated cases including those involving supervisors who condone such misconduct.

Military and civilian personnel alike are encouraged to utilize the Informal Resolution System (IRS) as a means of direct resolution of sexual harassment complaints (not independently-criminal in nature). The IRS was designed to complement, not replace, current formal procedures for resolving complaints of discrimination. The IRS provides an opportunity for the individuals involved to resolve the conflict at an informal level.

[Add command-specific material as desired.]

The prevention of sexual harassment exemplifies the Department of the Navy's goal to uphold the highest standards of leadership and personal conduct. Each leader/manager/supervisor is responsible and accountable for providing training and guidance to his/her personnel and taking prompt, appropriate corrective action upon encountering evidence of inappropriate conduct.

Sexual harassment is unacceptable, inappropriate, and demeaning. It undermines unit cohesion and will not be tolerated in any form aboard USS FAIR WINDS. I expect every civilian and military member of this command to support this policy and to work with me to achieve an environment free from all forms of unlawful discrimination.

I. M. CO

Appendix E

SAMPLE POD/POW NOTES (PREVENTION OF SEXUAL HARASSMENT)

- SECNAVINST 5300.26B makes clear that the prohibition against sexual harassment may be enforced through punitive, disciplinary, or administrative action under military or civilian systems, including punishment for violation of a lawful general order under Article 92(1) of the UCMJ.

- The Navy Team must be comprised of an optimally integrated group of men and women able to work together to accomplish the mission. Each member is entitled to be treated fairly, with dignity and respect, and must be allowed to work in an environment free of unlawful discrimination.

- Sexual harassment is prohibited. The DON is committed to maintaining a work environment free from unlawful discriminatory practices and inappropriate behavior. All DON personnel, military and civilian, will be provided a work environment free from sexual harassment.

- Discrimination means the illegal treatment of a person or group based on handicap, race, color, national origin, age, religion, or sex. Sex discrimination refers to the practice of wrongfully treating men and women differently in the workplace, solely because of their sex.

- Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or
- b. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or
- c. Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

- The "Reasonable Person Standard" is an objective test used to determine if behavior constitutes sexual harassment. This standard considers what a reasonable person's reaction would have been under similar circumstances and in a similar environment. The reasonable person standard considers the recipient's perspective and not stereotyped notions of acceptable behavior. For example, a work environment in which sexual slurs, the display of sexually suggestive calendars, or other offensive sexual behavior abound can constitute sexual harassment even if other people might deem it to be harmless or insignificant.

- Sexual harassment involves conduct that a reasonable person would find sexual in nature in light of the relevant facts and circumstances. Behavior does not need to be overtly sexual if it creates an offensive work environment. Examples include sexist remarks or slurs, sexual advances, displays of pornographic material, touching, language, gestures, mannerisms, and similar behavior.

- Sexual harassment is prohibited in the workplace or any other place that is work-connected, as well as the conditions or atmosphere under which people are required to work. Examples of work environment include, but are not limited to, an office, an entire office building, a DOD base or installation, DOD ships, aircraft or vehicles, anywhere when engaged in official DON business, as well as command-sponsored social, recreational and sporting events, regardless of location.

- No individual in the DON shall commit sexual harassment, take reprisal action against a person who provides information on an incident of alleged sexual harassment, knowingly make a false accusation of sexual harassment, or while in a supervisory or command position, condone or ignore sexual harassment of which he or she has knowledge or has reason to have knowledge. These rules are regulatory orders, apply to all DON personnel individually without further implementation, and may be enforced through punitive, disciplinary, or administrative action under military or civilian systems, including punishment for violation of a lawful general order under Article 92 of the UCMJ.

- The Informal Resolution System (IRS) was established by SECNAV to resolve conflict at lowest possible level. The IRS emphasizes the Navy's core values of: Honor, Courage, Commitment. Under the IRS, each person has a responsibility to be a role model of appropriate behavior and confront inappropriate behavior when observed or brought to his/her attention. In general, each individual's responsibilities are--

1. Do not ignore;
2. Review options; and
3. Take action to resolve.

- Military and civilian personnel are encouraged to utilize the Informal Resolution System (IRS) as a means of direct resolution of sexual harassment complaints (not clearly criminal in nature). The IRS was designed to complement, not replace, other

procedures for resolving complaints of discrimination. The IRS provides an opportunity for the individuals involved to resolve the conflict at an informal level.

- Information on the Informal Resolution System (IRS) is contained in the IRS Skills Booklet. If you don't have a copy, see [insert local name/phone].

- "Red Zone" sexual harassment is always unacceptable. Examples include seeking sexual favors in return for favorable evaluation, making supervisory decisions based on race/gender, "hate" mail, rape, assault. Clearly criminal red zone behavior must be reported through official channels.

- "Yellow Zone" behavior is inappropriate to most people. Examples include racial/sexual slurs, comments, jokes, sexually suggestive touching. If repeated, especially after being told of its offensiveness, yellow turns to red and becomes definitely unacceptable.

- "Green Zone" behavior is always acceptable. Examples include counseling on performance, military appearance, normal social interaction, polite compliment, friendly conversation.

- Under the "Direct" approach of Informal Resolution System (IRS), a recipient of sexual harassment may elect to resolve inter-personal conflict directly with the offending person.

- Under the "Informal 3rd party" approach of the Informal Resolution System (IRS), a recipient of sexual harassment (or the offending person) may elect to enlist the informal assistance of some other person to help resolve inter-personal conflict.

- Under the Informal Resolution System (IRS), anyone can ask (anonymously, if you wish) for generic, non-accusatory command training from a Training Information Resource (TIR). (The CO determines if a TIR is appropriate to address the issue.) TIR requests may be submitted [provide command-specific details, including how to submit anonymous requests].

- No individual may take or condone reprisals against a person who provides information on an incident of alleged sexual harassment. A reprisal is the wrongful threatening or taking of either unfavorable action against another or withholding favorable action from another solely in response to a report of sexual harassment (or other discrimination). Reprisal can be overt or subtle: reduction in FITREP/evaluation marks "out of the blue," inequity in duty assignments, increased workload/watchstanding, not recommending personnel for advancement, retention, or special programs.

- Incidents of sexual harassment cover a wide range of behaviors, from verbal comments to rape. Likewise, the full range of administrative and disciplinary actions is available to address sexual harassment. These include informal counseling,

comments in fitness reports and evaluations, administrative separation, punitive measures under the UCMJ, or criminal prosecutions.

- Per SECNAV policy, it is mandatory that military personnel be processed for administrative separation on the first substantiated incident of aggravated sexual harassment.

- Commanders and supervisors are responsible for leading the men and women under their control. They must set the example in treating all people with mutual respect and dignity, fostering a climate free of all forms of discrimination, and eliminating sexual harassment.

- All personnel are responsible for treating others with mutual respect and dignity. This means fully and faithfully complying with the Navy's policy of zero sexual harassment. All DON personnel are accountable for their actions.

- One form of sexual harassment occurs when the unwelcome sexual behavior of one or more persons produces a work environment which is offensive, intimidating, or abusive to a reasonable person.

- "Quid Pro Quo" ("This for That") sexual harassment occurs when submitting to or rejecting unwelcome sexual behavior is used as a basis for decisions affecting any person's employment, job, pay, or career. This could be a promise of employment, a promotion, a threat of or an actual demotion, a duty assignment, or a positive or negative performance evaluation.

- Assistance for persons who believe they have been sexually harassed or otherwise discriminated against is available from [insert applicable hotlines, counseling numbers, names of EO/EEO counselors and officials, local command and shore-based support or referral resources such as Human Resources Management personnel, Equal Opportunity advisors, Medical Treatment Facilities (MTF), chaplains, Naval Legal Service Office, etc.].

- A servicemember may request mast with the CO pursuant to NAVREGS 0820 and 1151, 1152, 1156. A member's right to communicate with the CO in a proper manner, and at a proper time and place, may not be denied or restricted. Any such requests shall be acted upon promptly and forwarded without delay.

- Servicemembers who believe themselves wronged by their CO or other superior officer, and have been refused redress after due application to that officer, shall not fail in maintaining a respectful bearing towards such superior, but may report the wrong to proper higher authority in the manner provided in Article 138 of the UCMJ, NAVREGS 1150, and Chapter III of the JAG Manual). Counsel may be available at the cognizant Naval Legal Service Office (NLSO) to assist eligible personnel in the preparation of such complaints. For such assistance call [insert appropriate NLSO number].

- Local procedures for processing discrimination complaints and available avenues of resolution and redress are [insert details applicable to command].
- Recognize that you are personally accountable for your actions; continually strive for individual excellence in your personal ethics.
- Just because conduct isn't sexual harassment doesn't necessarily mean that it's OK. Even welcomed conduct is improper if it involves using official position for private gain, giving preferential treatment, use of official time for unofficial activities, use of government property for unauthorized purposes, and unauthorized giving/accepting of gifts. (See DODDIR 5500.7 of 30 Aug 93, Standards of Conduct; DOD 5500.7-R, Joint Ethics Regulation (JER); ALNAV 139/93.)
- Just because conduct isn't sexual harassment doesn't necessarily mean that it's OK. Even welcomed conduct is improper if it involves fraternization prohibited by NAVREGS 1165 and OPNAVINST 5370.2A. Fraternization can involve sexual conduct such as dating, cohabitation, or sexual relations, but it is a gender-neutral concept and can also involve non-sexual conduct (such as an inappropriate business partnership for private gain). Fraternization includes:
 - Any officer-enlisted personal relationship which is unduly familiar and does not respect differences in rank and grade;
 - Any officer-officer or enlisted-enlisted personal relationship which is unduly familiar and does not respect differences in rank and which is prejudicial to good order and discipline or a nature to bring discredit upon the naval service. Such circumstances include those which call into question a senior's objectivity, result in actual or apparent preferential treatment, undermine the authority of a senior, compromise the chain of command. Such unduly familiar relationships are specifically prohibited when the parties are in a direct senior/subordinate relationship in the same military chain of command and normally will also be inappropriate in the following instances even when there is no direct supervisory relationship: staff/student or CPO/junior (E-6 and below).
- All personnel will be afforded equality of opportunity in training and advancement. Assignments and duties will be based on talent and ability irrespective of what is "traditional" or "non-traditional."
- Do you know what these acronyms stand for: USNA, NAPS, NROTC, BOOST, ECP, OCS, AOCS, LDO, CWO? All involve types of programs for enlisted personnel to obtain officer commissions. For information contact [insert appropriate name/phone].
- Did you know that your FITREP, EVAL, or performance appraisal will reflect your compliance and support of sexual harassment prevention policy objectives? Make every effort to ensure your marks are "4.0"!
- [Publicize members' accomplishments.]

- [Recognize significant historical events and achievements of women (and minorities).]

- [Publicize and encourage unit members to participate in host community affairs.]

- The Civilian Employee Assistance Program (CEAP) is responsible for developing and maintaining appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and/or drug problems. CEAP may also offer assistance for other emotional problems that impact adversely on job performance. Program services may also be extended, to the extent feasible, to families of employees who have drug or alcohol problems and employees with family members who have alcohol or drug problems. For further information contact [insert local POC]. (Reference: OCPMINST 12792.1 (CPI 792).)

- The Navy's Sexual Harassment Advice Line is available to all DON military and civilian personnel Monday - Friday 1000-1800 EST for obtaining confidential counseling and advice for identifying and dealing with sexual harassment and similar inappropriate behavior. Call toll free 1-800-253-0931, DSN 224-2735, or commercial (703) 614-2735 (call collect from overseas).

Appendix F

Informal Resolution System (IRS) Skills Booklet

In order to assemble a complete copy of this Handbook, please insert a copy of the following material (which should be readily available at all commands) as this appendix--

Informal Resolution System (IRS) Skills Booklet--
"Resolving Conflict . . . Following the Light of Personal Behavior," NAVPERS 15620, SN 0500LP5430900 (may be ordered via normal supply channels from Navy Aviation Supply Office (ASO 1013), 700 Robbins Avenue, Philadelphia, PA, 19111-5098 (phone (215) 697-2626/2997 or DSN 442-2626/2997))



Appendix G
Commander's Handbook

DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

IN REPLY REFER TO
31 AUG 1993

From: Chief of Naval Personnel

Subj: TRAINING INFORMATION RESOURCE LIBRARY

Encl: (1) Training Information Resource Library User's Guide

1. The Training Information Resource (TIR) Library consists of seven video tapes and seven books which are intended to augment required sexual harassment training. Sets of the materials listed in enclosure (1) have been distributed to Naval Education and Training Support Center Pacific and Atlantic and to Family Service Centers nationwide for loan to requesting commands.

2. Enclosure (1) provides a listing of titles available and a brief description of each to assist commands in determining the most appropriate resource for their particular training needs. Comments on the utility of each resource are requested to be returned to the Assistant Chief of Naval Personnel for Personal Readiness and Community Support by means of a reply form enclosed with each tape or book. A copy of the feedback form is provided with enclosure (1). Feedback will be used to determine the general utility of the library, whether to expand availability and which resources to restock. Your comments may also be directed to the Equal Opportunity Division (Pers-61) at DSN 224-2007 or commercial 703-614-2007.



R.J. ZLATOPER

Distribution:
SNDL Parts 1 and 2

TRAINING INFORMATION RESOURCE LIBRARY USER'S GUIDE

Video #1

Sexual Harassment... Shades of Gray

Pacific Resource Development Group
4044 N.E. 58th
Seattle, WA 98105.
(206) 782-7015

Series:

- I What Are We Doing Here?
- II What is Sexual Harassment?
- III Costs of Sexual Harassment?
- IV What Does the Law Say?
- V What Should I Do?

Video Length: 5 tapes, each approximately 15 minutes long.

Consistent with DON Policy: Yes, however facilitator should point out that the DON definition of Sexual Harassment also includes behavior that is "deliberate" (i.e., one-time) or repeated, which is more encompassing than the EEOC definition presented.

Intended Audience: Senior/Mid-level/Junior

Intended Purpose:

recognition of sexual harassment:	Yes
resolution of sexual harassment:	Yes
informal procedures:	Yes
formal procedures:	Yes

Facilitation: Recommended

Strengths:

- * The presentation is divided into five videocassettes, creating the ideal situation for facilitation of discussion.
- * Covers behavioral and legal definitions, and the origin of many of the civil statutes which define sexual harassment.
- * Explains the financial and interpersonal costs of sexual harassment.
- * Gives specific steps for informal/formal resolution of sexual harassment complaints for victims, co-workers and managers.

Weaknesses:

- * None noted.

Encl (1)

Video #2

The Sexual Harassment Quiz

Enterprise Media Inc.
91 Harvey Street
Cambridge, MA 02140
1-800-423-6021

Video Length: 60 minutes

Consistent with DON Policy:

Yes, however facilitator should point out that the DON definition of Sexual Harassment also includes behavior that is "deliberate" (i.e., one-time) or repeated, which is more encompassing than the EEOC definition presented.

Intended Audience: Mid-level/Junior

Intended Purpose:

recognition of sexual harassment:	Yes
resolution of sexual harassment:	No
informal procedures:	No
formal procedures:	No

Facilitation: Necessary to guide discussions following film

Strengths: * Uses audience participation and self evaluation.
* Promotes discussion of issues.

Weaknesses: * Audience comments are sometimes examples of poor understanding of sexual harassment.

Other: * This video would be ideal to promote small group discussions.

Video #3

Intent vs. Impact

Management and Employee Training Videos
BNA Communications Inc.
9439 Key West Ave.
Rockville, MD 20850-3396
1-800-233-6067
(301) 948-0540

Video Length: 26 minutes

Consistent with DON Policy: Yes, however facilitator should point out that the DON definition of Sexual Harassment also includes behavior that is "deliberate" (i.e., one-time) or repeated, which is more encompassing than the EEOC definition presented.

Intended Audience: Senior/Mid-level/Junior

Intended Purpose:

recognition of sexual harassment:	Yes
resolution of sexual harassment:	Yes
informal procedures:	Yes
formal procedures:	No

Facilitation: Recommended

Strengths: * Leadership's responsibilities are highlighted.
* Reinforces Navy's focus on impact of behavior, not intent.
* Scenarios are realistic and balanced.

Weaknesses: * Lacks DOD/DON policies for formal grievance procedures.

Other: * This well made and timeless instructional video has two steps, (1) recognizing sexual harassment and (2) resolving sexual harassment complaints.

Video #4

Valuing Diversity: Communicating Across Cultures

Griggs Productions
2046 Clement Street
San Francisco, CA 94121
(415) 668-4200

Video Length: 30 minutes

Consistent with DON Policy: Yes, however facilitator should point out that the DON definition of Sexual Harassment also includes behavior that is "deliberate" (i.e., one-time) or repeated, which is more encompassing than the EEOC definition presented.

Intended Audience: Senior/Mid-level/Junior

Intended Purpose:

recognition of sexual harassment:	No
resolution of sexual harassment:	No
informal procedures:	Yes
formal procedures:	No

Facilitation: Recommended

Strengths: * This video is excellent for emphasizing a multicultural environment and the effects that different perceptions can have on communication.
* Presents various methods of working successfully with a diverse work group.

Weaknesses: * Does not deal with the issue of Sexual Harassment.

Other: * Excellent equal opportunity training.

Video #5

Sexual Harassment: Learning to Avoid the Hassle

Video Publishing House, Inc.
930 North National Parkway
Suite 505
Schaumburg, IL 60173
1-800-824-8889
(708) 517-8744

Video Length: 20 minutes

Consistent with DON Policy: Yes, however facilitator should point out that the DON definition of Sexual Harassment also includes behavior that is "deliberate" (i.e., one-time) or repeated, which is more encompassing than the EEOC definition presented.

Intended Audience: Senior/Mid-level/Junior

Intended Purpose:

recognition of sexual harassment:	Yes
resolution of sexual harassment:	Yes
informal procedures:	Yes
formal procedures:	Yes, civilian

Facilitation: Recommended

Strengths: * Strong emphasis on informal resolution of complaints.
* Highlights leadership responsibility.

Weaknesses: * None noted.

Video #6

Employee Awareness: Sexual Harassment

AIMS Media
9710 DeSoto Avenue
Chatsworth, CA 91311-4409
1-800-367-2467
(818) 773-4300
(805) 252-9009

Video Length: 13 minutes

Consistent with DON Policy: Yes, however facilitator should point out that the DON definition of Sexual Harassment also includes behavior that is "deliberate" (i.e., one-time) or repeated, which is more encompassing than the EEOC definition presented.

Intended Audience: Senior/Mid-level/Junior

Intended Purpose:

recognition of sexual harassment:	Yes
resolution of sexual harassment:	Yes
informal procedures:	Yes
formal procedures:	Yes

Facilitation: Recommended

Strengths: * Emphasizes personal responsibility.
* Useful scenarios for discussion.

Weaknesses: * None noted.

Video #7

Sexual Harassment Training

U. S. Coast Guard Training Film

Video Length: 30 minutes

Consistent with DON Policy: Yes, however facilitator should point out that the DON definition of Sexual Harassment also includes behavior that is "deliberate" (i.e., one-time) or repeated, which is more encompassing than the EEOC definition presented.

Intended Audience: Senior/Mid-level/Junior

Intended Purpose:

recognition of sexual harassment:	Yes
resolution of sexual harassment:	Yes
informal procedures:	Yes
formal procedures:	Yes

Facilitation: Facilitation guide included with film

Strengths:

- * The scenarios use Coast Guard personnel which provides a military setting applicable to the audience.
- * Addresses leadership responsibilities.

Weaknesses:

- * None noted.

Book #1

Coping with Sexual Harassment

Beryl Black

Informal methods for dealing with sexual harassment on the job.
Good guide for informal resolution, emphasizing personal responsibilities.

Book #2

Intent vs. Impact

Stephen F. Anderson

A manager's guide to the detection and prevention of sexual harassment within the Federal workplace. An excellent real life scenario based guide.

Book #3

Sexual Harassment: Shades of Gray

Susan L. Webb

An outstanding guide for managers, supervisors and employees.
Gives a comprehensive look at sexual harassment.

Book #4

The Delicate Art of Dancing With Porcupines

Bob Phillips

Learning to appreciate the finer points of others and how to deal with opposing views within the workplace and outstanding representation of differing views with a sense of humor.

Book #5

Cultural Diversity Manual

Irving Buchen

An outstanding manual on the culturally diverse workplace and how to effectively manage it. Includes management techniques and approaches to proactive prevention of cultural biases and conflicts.

Book #6

Beyond Race and Gender

R. Roosevelt Thomas Jr.

This book supplies an action plan, model case study, and tough questions and answers on how to better use the human talent available. An excellent guide to the culturally diverse workplace.

Book #7

Race, Class, and Gender in the United States

Paula S. Rothenberg

An integrated study of the effects of race, class and gender in the U.S. Emphasizes the social and ethical values placed on individuals within our society. Excellent guide.

TRAINING INFORMATION RESOURCE (TIR) LIBRARY EVALUATION FORM

1. Your frank appraisal of TIR material is requested to assist in further procurement and distribution decisions. Please complete this form for each book or video tape you have used and return it directly to the Chief of Naval Personnel (Pers-612) by folding along the dotted lines, stapling and applying postage. Ensure the address printed on the reverse side of this sheet is folded on the outside for mailing.

2. Your feedback is important. Thank you for taking the time to fill out and return this form.

Command: _____ Date: _____

POC/Phone number: _____

TIR Title: Book _____
Video Tape _____

Audience: Senior Mid-level Junior

From what source did you obtain the material? If from a Family Service Center, specify which one. _____

Was the book/video tape in good condition? If not, what was the problem?

Did you have trouble getting the book/video tape?

How long did you have to wait to get it?

Was the book/video tape a valuable training tool? If not, why?

Any suggestions or other comments:

DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL (PERS-61)
WASHINGTON, D.C. 20370-5000

Appendix H

Schedule of Offenses and Recommended Remedies

In order to assemble a complete copy of this Handbook, please insert a copy of the following material (which should be readily available at all commands) as this appendix--

Schedule of Offenses and Recommended Remedies,
appendix B to enclosure (1) of OCPMINST 12752.1 (w/
Ch-1) (Discipline and Adverse Actions (CPI 752-B))

CHARGING SEXUAL HARASSMENT UNDER THE UCMJ

Sexual harassment constitutes an offense under UCMJ Article 92(1) (SECNAVINST 5300.26B) violations of this order should generally prove to be the most convenient and appropriate way to charge sexual harassment offenses. (NAVREGS 1166 prohibits the same conduct, but SECNAVINST 5300.26B, which includes definitions of key terms, is preferable.) SECNAVINST 5300.26B prohibits the following:

CONDUCT (applies to all conduct which occurs in or impacts a DOD working environment; reasonable person standard used to determine violation)		REMARKS (maximum punishment for each violation includes dishonorable discharge (DD) and 2 years' confinement)
Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when sexual nature	submission to/rejection of such conduct is explicitly or implicitly made a term/condition of person's job/pay/career, or submission to/rejection of such conduct by a person is used as basis for career/employment decisions affecting that person, or such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment	"quid pro quo" sexual harassment; (e.g., promise of employment, promotion, threat of or actual demotion, duty assignment, positive/negative eval) "quid pro quo" sexual harassment could include a work environment in which sexual slurs, the display of sexually suggestive calendars, or other offensive sexual behavior abound
Deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature		
Take reprisal action against a person who provides information on an incident of alleged sexual harassment		wrongful threatening/taking unfavorable action (or withholding favorable action) solely for reporting sexual harassment
Knowingly make false accusation of sexual harassment		honest belief in accusation's validity is complete defense
While in a supervisory or command position, use, condone, or ignore sexual harassment of which supervisor/commander has knowledge or has reason to have knowledge		

Although the UCMJ contains other articles prohibiting sexual harassment or conduct related to sexual harassment, generally it should suffice to charge as indicated above. However, charging other violations in addition to, or in lieu of, the foregoing charges may be indicated where the conduct in question is particularly serious, or not adequately covered by SECNAVINST 5300.26B. The following is a non-exclusive summary of other possible charges:

BEHAVIOR	UCMJ ARTICLES	MAX PUNISHMENT (discharge, confinement)	REMARKS
Threatening to influence adversely another's job, pay or career in exchange for sexual favors	127 (extortion) 134 (communicating a threat)	DD, 3 yrs	
Offering/accepting sexual favors for job	134 (bribery/graff)	DD, 5/3 yrs (bribery/graff)	a willing "victim" commits bribery; a willing supervisor commits graft
Cruelty, oppression, or maltreatment of subordinate by superior	93	DD, 1 yr	conduct does not have to be sexual; victim must be "subject to the orders" of the accused but need not be subject to UCMJ
Using official position for private gain; use of supervisor's or subordinate's official time for unofficial activities; use of government property for unauthorized purposes; unauthorized gift to superior	92(1) (violating lawful general order adopting Office of Government Ethics standards of conduct--promulgated by DODDIR 5500.7, DOD 5500.7-R, and ALNAV 139193)	DD, 2 yrs	can be committed even when "victim" is willing; in many instances, willing "victim" also commits offense
Language or gesture strong enough to risk inciting breach of peace	117 (provoking words/gestures)	discharge N/A, 6 mos	victim must be subject to UCMJ & present; N/A to proper reprimand/reproof/counseling

I-1 (continued on following page)

(continued from preceding page)

BEHAVIOR	UCMJ ARTICLES	MAX PUNISHMENT (discharge, confinement)	REMARKS
Disrespectful language or behavior - could include milder behavior than that needed to violate SECNAVINST 5300.26B	89 (disrespect to superior commissioned officer)	BCD, 1 yr	accused must know victim was officer; victim need not have been present; victim need not have been executing office
Indecent language	91(3) (disrespect to WO-1 or NCO/PO executing his/her office)	discharge/confinement varies based on victim's status (maximum: BCD, 9 mos)	accused must be WO-1 or enlisted; accused must know victim's status; victim must have been present; victim need not be superior
Nonconsensual physical conduct or attempted nonconsensual physical conduct	134 (indecent language)	BCD, 6 mos	can be written as well as verbal
	90 (assaulting superior commissioned officer executing his/her office)	DD, 10 yrs (death possible in wartime)	accused must know victim's status; any offensive touching, however slight;
	91(1) (assaulting WO-1/NCO/PO executing his/her office)	varies from DD/5 yrs to DD/1 yr based on victim's status	accused must be WO-1 or enlisted; accused must know victim's status; victim need not be superior; any offensive touching, however slight
Consensual physical conduct of a sexual nature	120 (rape)	DD, death/life imprisonment	victim can be either male or female
	125 (forcible sodomy)	DD, 20 yrs	
	128 (assault, assault and battery, assaulting officer/WO-1 (not executing office), inflicting grievous bodily harm)	varies from BCD/6 mos to DD/10 yrs (based on victim's status, force used, injuries)	battery includes any offensive touching, however slight
	134 (indecent assault)	DD, 5 yrs	requires intent to gratify accused's lust
	134 (assault intending rape, sodomy)	DD, 20/10 yrs (rape/sodomy)	
	134 (indecent exposure)	BCD, 6 mos	
	125 (consensual sodomy)	DD, 5 yrs	
	134 (adultery)	DD, 1 yr	at least one must be married to someone else
	134 (indecent acts with another)	DD, 5 yrs	
Fraternization: unduly familiar inappropriate personal relationship, which need not necessarily be sexual	92(1) (violating general order of NAVREGS 1165 or OPNAVINST 5370.2A)	DD, 2 yrs	encompasses certain officer-officer and enlisted-enlisted (as well as officer-enlisted) only applies to officer accused in officer-enlisted relationship
Supervisor failing to take adequate steps to foster a climate free of sexual harassment, investigate allegations, or protect victims/witnesses from reprisals	92(3) (dereliction of duty)	BCD, 6 mos	necessary that accused knew or should have known of duties, but not necessary that accused knew or should have known about actual instances of sexual harassment
Accused is an officer	133 (conduct unbecoming an officer)	Dismissal, confinement varies	includes behavior in a private capacity
Other conduct prejudicial to good order and discipline, or service discrediting	134 (the general article)	varies	can include conduct that violates other Federal or state law

Appendix J

BIBLIOGRAPHY OF REFERENCES RELATED TO SEXUAL HARASSMENT

Manual for Courts-Martial, 1984

U.S. Navy Regulations, 1990, articles 1164 (Equal Opportunity and Treatment), 1165 (Fraternization) and 1166 (Sexual Harassment); ALNAV 013/93 (current versions of NAVREGS 1165, 1166)

Naval Military Personnel Manual, NAVPERS 15560C

SECNAVINST 1600.1A, Relationships with Organizations which Seek to Represent Members of the Armed Forces in Negotiation or Collective Bargaining

BUPERSINST 1611.17, Navy Officer Fitness Report (FITREP) Manual

BUPERSINST 1616.9A, Navy Enlisted Performance Evaluation (EVAL) Manual

OPNAVINST 1620.2, Armed Forces Disciplinary Control Boards/Off-Base Military Law Enforcement/Joint Law Enforcement Operations.

OPNAVINST 1752.1, Rape Prevention and Victim Assistance

SECNAVINST 1752.1A (pending instruction on sexual harassment reporting requirements)

SECNAVINST 1920.6A, Administrative Separation of Officers

OPNAVINST 3100.6F, Special Incident Reporting (OPREP-3, Navy Blue, and Unit Sitrep) Procedures

OPNAVINST 3120.32B, Standard Organization and Regulations of the U.S. Navy

OPNAVINST 5040.7K, Naval Command Inspection Program

OPNAVNOTE 5040, Items of Special Interest During Command Inspections

SECNAVINST 5211.5D, Department of the Navy Privacy Act (PA) Program

OPNAVINST 5300.9 (series), Navy Policy on Sexual Harassment

SECNAVINST 5300.26B, Department of the Navy (DON) Policy on Sexual Harassment

SECNAVINST 5350.10B, Equal Opportunity (EO) Within the Department of the Navy Manual.

OPNAVINST 5354.1C, Navy Equal Opportunity/Navy Equal Opportunity Manual.

OPNAVINST 5354.3D, Navy Affirmative Action Plan

OPNAVINST 5370.2A, Navy Fraternization Policy

SECNAVINST 5430.57F, Mission and Functions of the Naval Inspector General

DODDIR 5500.7 of 30 Aug 93, Standards of Conduct, and DOD 5500.7-R, Joint Ethics Regulation (JER). (See ALNAV 139/93.)

OPNAVINST 5510.1H, Department of the Navy Information and Personnel Security Program Regulation

OPNAVINST 5510.162, Nuclear Weapon Personnel Reliability Program

SECNAVINST 5520.3B, Criminal and Security Investigations and Related Activities Within the Department of the Navy

JAGINST 5800.7C, Manual of the Judge Advocate General (JAGMAN)

SECNAVINST 5800.11, Protection and Assistance of Crime Victims and Witnesses.

SECNAVINST 5822.1B, Federal Magistrates Act, Implementation by Department of the Navy

DODDIR 6490.1 (14 Sep 93), Mental Health Evaluations of Members of the Armed Forces

OCPMINST 12713.2, Department of the Navy Discrimination Complaints (CPI 713)

OCPMINST 12720.1, Equal Employment Opportunity and Affirmative Employment Programs (CPI 720)

OPNAVINST 12720.4B, Equal Employment Opportunity Program Management

SECNAVINST 12720.5A, The Department of the Navy Civilian Equal Employment Opportunity Program (enclosing DODDIR 1440.1 of 21 May 87, The DoD Civilian Equal Employment Opportunity (EEO) Program).

OCPMINST 12752.1, Discipline and Adverse Actions

OCPMINST 12771, Department of the Navy Administrative Grievance System - (CPI 771)

OCPMINST 12792.1, Department of the Navy Civilian Employee Assistance Program - (CPI 792)

CPI 430 (GS-1 to GS-18); CPI 540 (GM-13 to GM-15); OCPMINST 1292.1 (SES)); ALNAV 70/91 and OFFCPM ARLINGTON VA 241414Z JUN 91 (implementing EEO as mandatory critical element in civilian performance appraisals/work plan objectives model!

** Informal Resolution System (IRS) Skills Booklet--"Resolving Conflict . . . Following the Light of Personal Behavior," NAVPERS 15620, SN 0500LP5430900

** Booklet--"Sexual Harassment: Drawing the Line--Your Rights and Responsibilities in the Sea Services," SN 0503LP4782500

** Booklet--"Sexual Harassment: Drawing the Line--Your Rights and Responsibilities in the Federal Workplace," SN 0503LP4782600

** May be ordered via normal supply channels from Navy Aviation Supply Office (ASO 1013), 700 Robbins Avenue, Philadelphia, PA, 19111-5098 (phone (215) 697-2626/2997 or DSN 442-2626/2997).

Appendix K

INFORMAL RESOLUTION SYSTEM (IRS) CASE STUDIES

Case studies can help "make the system real." Disagreement on the evaluation of these studies is expected, as not everyone will necessarily agree on the selection of zones for each study or appropriate resolutions. The important learning principle is the process of applying and selecting the options and actions for the zone selected.

Remember that the successful use of the IRS is dependent upon individual responsibility, successful interpersonal communications skills, and an understanding of how a reasonable person would view the situation. An open mind and a willingness to learn how to resolve conflict at the lowest possible level will help obtain the maximum benefit from what the IRS has to offer.

Familiarity with the IRS Skills Booklet (Resolving Conflict . . . Following the Light of Personal Behavior (NAVPERS 15620)) (Appendix F of this Handbook) is essential to a meaningful analysis of these studies.

The following IRS Case Studies are provided:

<u>Number</u>	<u>Zone</u>	<u>Page</u>
IRS Case Study 1	Yellow	K-2
IRS Case Study 2	Yellow or Red	K-4
IRS Case Study 3	Yellow	K-7
IRS Case Study 4	Red	K-10
IRS Case Study 5	Yellow	K-13
IRS Case Study 6	Green	K-16
IRS Case Study 7	Yellow	K-18
IRS Case Study 8	Yellow	K-21

IRS CASE STUDY 1

John is new to the office and has been in the job for 3 weeks. Most of his co-workers (male and female) find his sense of humor both unique and refreshing, but Beth finds his humor offensive. She believes that his remarks and jokes are sexually suggestive, e.g.:

"That's a very pretty dress. You look good in that color."

"If I weren't married, I'd go for someone like you."

"I prefer convertibles. They make the hop into the back seat more convenient."

DISCUSSION:

a. **What happened?** Beth believes that the comments made by John are offensive and inappropriate.

b. **Is there a conflict?** Yes, since Beth is offended by John's remarks.

c. **In which behavior zone does the behavior fall?** Yellow Zone. John's remarks are sexually suggestive and his behavior could reasonably be considered inappropriate by Beth.

d. **What are the roles involved in the scenario?**

Recipient "A" - Beth

Offending Person "B" - John

e. **What are the individual responsibilities for each role?**

Recipient "A" - Beth

- I do not ignore conflict
- I review my options
- I take action to reach a resolution

Offending Person "B" - John

- I do not ignore conflict
- I listen to understand
- I review my options
- I take action to reach a resolution

f. For the identified behavior zone(s), identify the IRS¹ resolution options and actions available for each role.

Recipient "A" - Beth. Beth could directly approach John, in person or in writing. Or if she is not comfortable using the direct approach she may request a third party accompany her to speak to John or go to John on her behalf. Finally, Beth could request a TIR.

Offending Person "B" - John. John may select the direct approach and listen to Beth to understand. He should change his behavior and apologize. He may ask a third party to go to Beth with him or for him, on his behalf. He could request a TIR.

g. Of the resolution options and actions identified, which will likely be the most effective for resolving the conflict?

Direct Approach "A" - Beth. The direct approach should work best. Many times the offending person may not realize that the behavior was a problem. It may be sufficient for Beth to just tell John that she doesn't appreciate his comments, that they are inappropriate, and tell him to stop. Beth may explain that the compliment on her dress was ok, however, the other two comments were not. They should come to a solution they can both accept; 1) he can compliment her in a nonsexual manner, or 2) no compliments are acceptable.

When speaking to Beth, John should try to find out exactly what bothered her. He should listen to understand. He may need to ask specific questions to understand that she did not mind the compliment, but that it was the other remarks that caused her distress. He should then apologize for causing her to be uncomfortable.

¹ Keep in mind that use of the IRS does not preclude use of other complaint processes.

IRS CASE STUDY 2

Frank is an electronics engineer whose job duties require him to travel to test sites to install components of the weapons system his office designs. His boss is attracted to Frank's wife and makes frequent comments to Frank about what a "lucky dog" Frank is. The boss comments on her personal appearance, her body, and describes what he'd like to do to her. He makes these comments every time he assigns Frank to go on travel. Frank is in a career ladder position and his scheduled promotion is dependent upon his boss's recommendation.

DISCUSSION:

- a. **What happened?** Frank's boss was making inappropriate sexual remarks about Frank's wife.
- b. **Is there a conflict?** Yes. Frank does not like the comments made by his boss about his wife. He has been reluctant to say anything that might cause his boss to deny his promotion.
- c. **In which behavior zone does the behavior fall?** Probably Yellow Zone (but some may see this as Red Zone).
- d. **Identify the roles involved in the scenario.**

Recipient "A" - Frank

Offending Person "B" - Frank's boss

- e. **What are the individual responsibilities for each role?**

Recipient "A" - Frank

- I do not ignore conflict
- I review my options
- I take action to reach a resolution

Offending Person "B" - Frank's boss

- I do not ignore conflict
- I listen to understand
- I review my options
- I take action to reach a resolution

f. For the identified behavior zone(s), identify the IRS¹ resolution options and actions available for each role.

Yellow Zone

Recipient "A" - Frank. Frank may choose to take the direct approach and speak to his boss in person or in writing. If he is not comfortable using the direct approach he may request a third party accompany him to speak with the boss or go to the boss on his behalf. Frank could request a TIR.

Offending Person "B" - Frank's boss. Once Frank's boss becomes aware that his behavior has offended Frank he should immediately change his behavior. He could directly approach Frank and apologize for offending him or he may ask a third party to go with him or for him, on his behalf. He may request a TIR.

Red Zone

Recipient "A" - Frank. Although Frank's boss has been disrespectful of Frank's wife, this is not such clearly criminal behavior as to preclude resolution under the IRS. Frank should, however, report this to the boss' superior in the chain of command as well as the results of his attempts at resolution. Frank may have to take formal action if his boss continues the behavior.

Offending Person "B" - Frank's boss. Frank's boss should immediately stop and change his behavior. He should seek legal counsel or ask for assistance to know and understand his rights. If Frank attempts to use the IRS, Frank's boss should cooperate to try to resolve the conflict at the lowest possible level.

g. Of the resolution options and actions identified, which will likely be the most effective for resolving the conflict?

Yellow Zone - Third Party Approach - "A" - Frank. Although the direct approach is the preferred method, in this case Frank may not feel he can do this without the help of a third party to accompany him to talk to his boss. (A third party may need only to be there to lend support to Frank depending on how the discussion goes with the boss. In choosing a third party, it should be someone who Frank trusts and feels comfortable with.) He should explain to the boss exactly why he was offended and that he didn't talk to him sooner because of the senior-subordinate relationship. Also, he was concerned that his upcoming promotion would be denied if he complained. Once Frank's boss

¹ Keep in mind that use of the IRS does not preclude use of other complaint processes.

becomes aware that Frank is offended, he must stop/change his behavior. He should apologize to Frank. He should listen to why Frank was offended and understand what impact this had on him. He should tell Frank that it won't happen again and that his promotion will be based on his ability to do the job.

Red Zone - Recipient "A" - Frank. Although Frank is offended by the disrespectful remarks made by his boss about his wife, this is not classically criminal behavior and as such Frank should try to resolve this at the lowest possible level by using the IRS and taking the third party actions as described under yellow zone behavior above. Additionally, he should notify his boss' superior and indicate what attempts have been made to resolve the conflict. (Frank's boss' superior cannot ignore allegations of sexual harassment and must take appropriate action; failure to do so could, among other things, subject the superior to personal liability for damages to Frank. The superior's obligation can be fulfilled, however, by ratifying a resolution already reached under the IRS, providing that both the recipient and the superior agree that such a resolution is satisfactory.) Once Frank's boss becomes aware that his behavior falls in this zone he must stop and change the behavior immediately. He should conduct himself in the manner described in yellow zone above. He should also notify his chain of command and seek assistance to know and understand his rights. He should also let the chain know what has been done to try and resolve the conflict.

IRS CASE STUDY 3

Sam, an accounting technician at a Naval Accounting Activity, and Valarie, also an accounting technician and a co-worker, had a heated argument over a work-related issue. Valarie accused Sam of insulting and threatening her during the argument with a remark that she was a "stupid broad" and that "if she didn't shut her mouth, he would teach her a lesson." Mario, another co-worker, overheard the argument and could not believe what Sam said.

DISCUSSION:

- a. **What happened?** Sam made harassing/threatening remarks to Valarie during a work related argument. Mario, a co-worker, overheard the argument.
- b. **Is there a conflict?** Yes. Several things could be going on here. There could be a misunderstanding or miscommunication over the issue which started the argument or a personality clash. Either way, Sam's remarks are offensive and inappropriate as far as Valarie and Mario are concerned. That constitutes conflict.
- c. **In which behavior zone does the behavior fall?** Yellow.
- d. **Identify the roles involved in the scenario.**

Recipient "A" - Valarie
Offending Person "B" - Sam
Other Person "C" - Mario

- e. **What are the individual responsibilities for each role?**

Recipient "A" - Valarie
- I do not ignore conflict
- I review my options
- I take action to reach a resolution

Offending Person "B" - Sam
- I do not ignore conflict
- I listen to understand
- I review my options
- I take action to reach a resolution

Other Person - Mario
- I do not ignore conflict
- I listen to understand
- I offer to intervene and support if appropriate

- I maintain confidentiality when possible
- I take action to reach a resolution

f. For the identified behavior zone(s), identify the IRS¹ resolution options and actions available for each role.

Recipient "A" - Valarie. Valarie may choose the direct approach and speak to Sam either in person or in writing. If she is not comfortable taking the direct approach she may request a third party accompany her to speak with Sam or go to Sam on her behalf. She could request a TIR.

Offending Person "B" - Sam. Once Sam is aware that this has offended Valarie, he should change his behavior. He could take the direct approach to discuss the matter with Valarie and apologize. He could ask a third party to accompany him to speak to Valarie or go to her on his behalf. He could request a TIR.

Other Person "C" - Mario. Mario should take the direct approach and speak to Valarie to see if she is offended. He may also speak to Sam to let him know he was out of line. Mario should suggest that Valarie directly approach Sam to let him know how she feels. He should suggest Sam apologize to Valarie and change the behavior. If Mario is not comfortable using the direct approach with Valarie or Sam, he can ask another third party for advice or assistance.

g. Of the resolution options and actions identified, which will likely be the most effective for resolving conflict?

Direct Approach - "C" - Mario. Mario should suggest that Sam and Valarie cease the argument and get some space from each other to calm down. He should speak to both to see if there is any way they can discuss the original issue that caused the argument. He should suggest that Valarie tell Sam how his comments have made her feel and that Sam should apologize for insulting and threatening her. Once the air is cleared regarding Sam's comments, Mario could suggest they are now in a better position to deal with the original disagreement. He may also offer to help them with that discussion.

When Valarie approaches the offending person, Sam, they should listen to understand each other's point of view. Valarie should say why she was offended. Whether he meant to be offensive or not, Sam should apologize to Valarie for the conflict he caused. He should change his behavior to avoid creating similar conflicts in the future.

¹ Keep in mind that use of the IRS does not preclude use of other complaint processes.

Resolving the conflict in this manner allows Valarie and Sam to resolve their conflict at the lowest possible level, between themselves. It facilitates their being able to return to a friendly working relationship.

IRS CASE STUDY 4

Becky tells Gregg, her close friend, that she has been sexually harassed on numerous occasions by her immediate supervisor, CDR Benson, for the last three months. She says that from her first day on the job he made explicit sexual comments to her, including inquiries about her personal sex life, asking her out on dates, asking her to come to his apartment, and sending her gifts. She has rejected his advances, told him repeatedly to stop, and has documented each incident. Becky says she doesn't know what to do.

DISCUSSION:

- a. **What happened?** Becky has told Gregg that she been subjected to repeated requests for dates, explicit sexual comments, and comments about her sex life by her immediate supervisor, CDR Benson. She has repeatedly told him to stop but the behavior has continued.
- b. **Is there a conflict?** Yes. Becky feels intimidated and harassed by her supervisor's behavior. She has told him to stop, but the behavior has continued. She doesn't know what else she can do.
- c. **In which behavior zone does the behavior fall?** Even though this behavior could be considered yellow zone initially, it has become **Red Zone** because it has continued even though Becky has asked CDR Benson to stop.
- d. **Identify the roles involved in the scenario.**

Recipient "A" - Becky
Offending Person "B" - CDR Benson
Other Person "C" - Gregg

- e. **What are the individual responsibilities for each role?**

Recipient "A" - Becky

- I do not ignore conflict
- I review my options
- I take action to reach a resolution

Offending Person "B" - CDR Benson

- I do not ignore conflict
- I listen to understand
- I review my options
- I take action to reach a resolution

Other Person - Gregg

- I do not ignore conflict
- I listen to understand
- I offer to intervene and support if appropriate
- I maintain confidentiality when possible
- I take action to reach a resolution

f. For the identified behavior zone(s), identify the IRS¹ resolution options and actions available for each role.

Recipient "A" - Becky. Although this is Red Zone, Becky may still try to use the IRS to resolve the conflict. (If she decides to use the IRS, but fails to resolve the conflict to her satisfaction, she can then take formal or official action.) In either event, Becky should report the conflict to CDR Benson's superior. (The superior must ensure that appropriate action is taken to effect resolution, either by taking such action himself/herself, or by ratifying the actions of others.) In determining what option to take, Becky must remember that as a civilian she has 45 days from the date of the last incident to initiate the EEO discrimination complaint process. (Note, however, that in the case of a "continuing" violation, the 45-day period might be extended.)

Offending Person "B" - CDR Benson. CDR Benson should immediately stop his behavior. He should seek legal counsel or ask for assistance to ensure he knows and understands his rights. If Becky attempts to use the IRS, he should cooperate to try to resolve the conflict at the lowest possible level.

Other Person "C" - Gregg. Gregg may suggest that Becky attempt to use another option within the IRS to resolve the conflict. If Becky doesn't believe this is appropriate, Gregg should encourage her to take formal action. He may also speak to CDR Benson on Becky's behalf. He should tell CDR Benson to stop the behavior, and that if Becky is contemplating taking formal action he may want to seek legal advice or assistance to know and understand his rights. If Gregg is not comfortable speaking to CDR Benson, he may need to ask somebody else for advice and/or assistance:

g. Of the resolution options and actions identified, which will likely be the most effective for resolving conflict?

Red Zone - "C" - Gregg. Gregg should encourage Becky to take formal action. Because Becky has already approached CDR Benson and told him to stop, but he has

¹ Keep in mind that use of the IRS does not preclude use of other complaint processes.

not done so, her only option is to use the formal system. She'll have 45 days from the date of the last incident to contact an EEO counselor.

CDR Benson must stop the behavior immediately and seek legal counsel or assistance to know and understand his rights.

In processing her formal complaint, Becky's command should work with her to investigate/substantiate the allegations, provide appropriate support, and resolve the conflict. Although the command should ascertain Becky's views and may take them into account, the command is not required to comply with her wishes on how to resolve the matter (or discipline CDR Benson). In this case, however, the command may well opt to take adverse action against CDR Benson.

IRS CASE STUDY 5

Emily and Barbara work in the same small office. Barbara is an out-spoken individual with strong beliefs. Most co-workers get along satisfactorily with both individuals. However, Emily has just told Linda (their mutual supervisor) that Barbara's on-going habits of loudly swearing to herself, making off-color remarks, and flirting with male co-workers are annoying her and affecting her ability to work. Barbara, on the other hand, has just asked Linda if she knew what was bothering Emily? Barbara is sure it isn't anything she has done and does not understand Emily's sudden silence and moodiness despite attempts at conversation.

DISCUSSION:

- a. **What happened?** Barbara is exhibiting work behavior that Emily views as offensive. Both individuals have spoken with Linda about the problems they are having with each other.
- b. **Is there a conflict?** Yes, Emily considers Barbara's actions offensive and inappropriate. Although Barbara is concerned about Emily's sudden silence and moodiness, she does not see herself in conflict.
- c. **In which behavior zone does the behavior fall?** Yellow Zone. Although not bothersome at first, day after day, Barbara's actions have become offensive and irritating. Barbara's conduct is adversely affecting Emily's ability to work.
- d. **Identify the roles involved in the scenario.**

Recipient "A" - Emily
Offending person "B" - Barbara
Supervisor "D"- Linda

- e. **What are the individual responsibilities for each role?**

Recipient "A" - Emily
- I do not ignore conflict
- I review my options
- I take action to reach a resolution

Offending Person "B" - Barbara
- I do not ignore conflict
- I listen to understand
- I review my options
- I take action to reach a resolution

Supervisor "D" - Linda

- I set the example
- I do not ignore conflict
- I listen and do not filter complaints
- I intervene, when necessary
- I take or support action to reach resolution
- I take appropriate action

f. For the identified behavior zone(s), identify the IRS¹ resolution options and actions available for each role.

Recipient "A"- Emily. Emily may choose to take the direct approach and speak to Barbara in person or in writing. If Emily is not comfortable taking the direct approach, she may ask a third party to go with her or for her to speak to Barbara on her behalf. In this case, Barbara might ask Linda, the supervisor ("D") to be the "third party." However, the "third party" could be anyone that Barbara feels could assist her the best. Finally, she may request a TIR to help resolve the conflict.

Offending Person "B"- Barbara. Barbara may also take the direct approach and speak to Emily in person. Once she understands that it is her behavior that has caused the conflict, whether intentional or not, she should change her behavior and apologize to avoid future conflicts. If Barbara is not comfortable taking the direct approach, she may ask a third party to go with her or for her to speak to Emily to help to resolve the conflict. Finally, Barbara may ask for a TIR if she thinks training would be helpful.

Supervisor "D"- Linda. Linda must take appropriate action, but this does not necessarily mean she has to solve the conflict herself if it appears a solution can be reached without her involvement. She may choose the direct approach and speak directly to Barbara and encourage her to apologize, or speak with Emily, or both. Linda could also refer one or both to support services. If Linda is unsure what to do, she may herself request advice from a third party. She may also request a TIR if she thinks that training would benefit the work center. She should keep a close eye on the situation to ensure the conflict has been resolved.

g. Of the resolution options and actions identified, which one will likely be the most effective for resolving the conflict?

Direct Approach "D"- Linda/Direct Approach "A"- Emily. The preferred option is for Linda (the supervisor) to confirm with Emily that Emily desires to resolve the matter

¹ Keep in mind that use of the IRS does not preclude use of other complaint processes.

informally. Linda should encourage Emily (the recipient) to directly speak to Barbara (the offending person). Linda should remind Emily to focus on the behavior that is bothering her and its impact. Emily should explain why Barbara's behavior is offensive and that she would like Barbara to change her behavior.

Barbara should listen to Emily to understand her point of view and why she was offended. Whether she meant to be offensive or not she should apologize to Emily for the conflict she caused. She should change her behavior to avoid creating future conflicts.

Resolving the conflict at the lowest possible allows Emily and Barbara to return to a friendly working relationship.

Linda (the supervisor "D") should follow up by checking with Emily later to confirm that the conflict has been resolved.

IRS CASE STUDY 6

Mike and Scott are on the same intramural basketball team. Both are aggressive and enjoy a good hard game. Mike doesn't like to be teased. Scott is quick and has a good sense of humor. Lately, it seems Scott has enjoyed kidding Mike because it's a chance to score points with other team members. Mike has become upset over the teasing and has allowed it to adversely affect his work.

DISCUSSION:

- a. **What happened?** Mike has taken offense to Scott's teasing and kidding.
- b. **Is there a conflict?** From Mike's perspective there is a conflict, because he is upset by Scott's behavior.
- c. **In which behavior zone does the behavior fall?** Green Zone. From the case scenario it appears that normal social interaction is occurring between Mike and Scott, which is not unacceptable. It appears that Mike may be overreacting, and that Scott's behavior would not unduly disturb a reasonable person.
- d. **Identify the roles involved in the scenario.**

Recipient "A"- Mike

Offending Person "B"- Scott

- e. **What are the individual responsibilities for each role?**

Recipient "A" - Mike

- I do not ignore
- I review my options
- I take action to reach a resolution

Offending Person "B" - Scott

- I do not ignore conflict
- I listen to understand
- I review my options
- I take action to reach a resolution

f. For the identified behavior zone(s), identify the IRS¹ resolution options and actions available for each role.

Recipient "A" - Mike. No action is required, but Mike may want to explain to Scott why his behavior offended him.

Offending Person "B" - Scott. Because the behavior is green no action is required, but Mike is still offended, and Scott should consider apologizing to Mike and discussing how they can communicate more effectively.

g. Of the resolution options and actions identified, which will likely be the most effective for resolving the conflict?

Green Zone - Mike. In green zone no action is required, however, Mike should still speak to Scott and let him know why the behavior offends him. Mike and Scott should listen to understand each other point of view. If they cannot come to agreement, they can ask another person for advice and assistance.

h. Note: Even though this case does not involve sexually oriented conduct, there is interpersonal conflict. Use of the IRS is not limited to sexual harassment cases, and may be used here by the parties involved or by a supervisor (since Mike's job performance has been adversely affected, the teasing should not be ignored.)

¹ Keep in mind that use of the IRS does not preclude use of other complaint processes.

IRS CASE STUDY 7

Bill, Rick, and Jerry are computer technicians who enjoy a rowdy office atmosphere. Brad, a new employee, hired six weeks ago, shares the same open office space. Until two weeks ago, Brad appeared to be getting along well with these three co-workers and seemed able to complete the simplest tasks with little difficulty. However, lately he seems unusually quiet and his work has not been up to par. He has overlooked simple repair procedures, and has called in sick numerous times.

Penny overhead Bill, Rick and Jerry telling obnoxious jokes and making off-color remarks, with Brad serving as the butt for many of them. Penny has noticed that Brad just shrugs his shoulders and seems to find the insulting jokes funny. When the three are not insulting Brad, they ignore him. Brad hasn't complained to anyone about the behavior.

DISCUSSION:

- a. **What happened?** Bill, Rick, and Jerry are insulting Brad by making him the subject of their jokes and off-color remarks. Their behavior appears to be having a negative impact on Brad's ability to work.
- b. **Is there a conflict?** Yes. Although Brad has not complained, the environment appears to be affecting him adversely.
- c. **In which behavior zone does the behavior fall?** Bill, Rick, and Jerry are demonstrating unacceptable behavior by repeatedly making jokes and off-color remarks at Brad's expense. However, since Brad has not complained and, at times, even laughingly goes along with them, this is so far only yellow zone behavior.
- d. **Identify the roles involved in the scenario.**

Recipient "A"- Brad
Offending Person "B"- Bill, Rick, and Jerry
Other Person "C" - Penny

- e. **What are the individual responsibilities for each role?**

Recipient "A" - Brad
- I do not ignore
- I review my options
- I take action to reach a resolution

Offending Person "B" - Bill, Rick, and Jerry
- I do not ignore conflict
- I listen to understand

- I review my options
- I take action to reach a resolution

Other Person "C" - Penny

- I do not ignore conflict
- I listen to understand
- I offer to intervene and support if appropriate
- I maintain confidentiality when possible
- I take action to reach a resolution

f. For the identified behavior zone(s), identify the IRS¹ resolution options and actions available for each role.

Recipient "A" - Brad. Brad could take the direct approach and speak to Bill, Rick, and Jerry either in person or in writing. If he is not comfortable approaching him directly, he could ask a third party for assistance or to accompany him to speak to them, or go to them on his behalf. However the "third party" could be anyone that Brad feels could assist him the best. He could request a TIR. (Note: Brad in this case does not know that Penny is aware of his situation. She may or may not be someone who he would use as a "third party").

Offending Person "B" - Bill, Rick, and Jerry. Once Bill, Rick, and Jerry become aware that they have offended Brad, they could take the direct approach to discuss the matter with Brad. They should listen to understand and then apologize. They should change their behavior to avoid conflicts in the future. They could ask a third party to accompany them to speak to Brad or go on their behalf. They could request a TIR.

Other Person "C" - Penny. Penny should use the direct approach and speak to Brad to see if he is offended. Penny should suggest that Brad directly approach Bill, Rick, and Jerry to let them know how he feels. She may also speak to Bill, Rick, and Jerry. She should suggest they apologize to Brad and change the behavior. If Penny is not comfortable taking the direct approach she may need to ask a third party, somebody else, for advice or intervention. Finally, she could request a TIR.

g. Of the resolution options and actions identified, which one do will likely be the most effective for resolving the conflict?

Direct Approach - "C" - Penny. "A" directly approaching "B" is viewed as the preferred option; however, in this situation Brad may feel uncomfortable with approaching

¹ Keep in mind that use of the IRS does not preclude use of other complaint systems.

Bill, Rick, and Jerry. In this case, the preferred option is for Penny to speak to Brad to see if he is offended. She can offer to accompany him or go for him to speak to Bill, Rick and Jerry.

If Brad is offended and asks her to go to them on his behalf, Penny should focus on the offending behavior and its impact when speaking to them. She should also tell them to change their behavior.

Bill, Rick and Jerry should listen to try and understand the impact their behavior had on Brad. They should apologize and change their behavior.

If Brad chooses not to take any action, but Penny is offended, she could then take the actions identified with role "A", the recipient.

(Note that even if it turns out that no one is offended, a supervisor who becomes aware of the situation might still conclude that the behavior is inappropriate/unprofessional and advise all involved of acceptable command standards.)

IRS CASE STUDY 8

A group of mechanics, both male and female, are working on an F-14. Petty Officer Johnson makes a comment about the job being a real "ballbuster". In addition, Petty Officer Johnson has made several remarks concerning the planes resemblance to a woman's anatomy. Seaman Smith, a female, is offended by the comments.

DISCUSSION:

- a. **What happened?** Petty Officer Johnson has made comments that Seaman Smith finds offensive.
- b. **Is there a conflict?** Yes, Seaman Smith is offended.
- c. **In which behavior zone does the behavior fall?** Yellow Zone.
- d. **Identify the roles involved in the scenario.**

Recipient "A"- Seaman Smith
Offending Person "B"- Petty Officer Johnson

- e. **What are the individual responsibilities for each role?**

Recipient "A" - Seaman Smith
- I do not ignore
- I review my options
- I take action to reach a resolution

Offending Person "B" - Petty Officer Johnson
- I do not ignore conflict
- I listen to understand
- I review my options
- I take action to reach a resolution

- f. **For the identified behavior zone(s), identify the IRS¹ resolution options and actions available for each role.**

Recipient "A" - Seaman Smith. Seaman Smith could take the direct approach and speak to Petty Officer Johnson in person or in writing. If she is not comfortable using the

¹ Keep in mind that use of the IRS does not preclude use of formal complaint systems.

direct approach she may request a third party to go with her to speak to Petty Officer Johnson or she could ask a third party to talk to Johnson on her behalf. Finally, Seaman Smith could request a TIR.

Offending Person "B" - Petty Officer Johnson. Petty Officer Johnson may select the direct approach and listen to Seaman Smith to understand why she was offended. He should change his behavior and apologize. He may ask a third party to go to Seaman Smith with him, on his behalf. He could request a TIR.

g. Of the resolution options and actions identified, which will likely be the most effective for resolving the conflict?

Direct Approach - "A" - Seaman Smith. The "direct approach" should work best. Many times the offending person may not realize that the behavior was offensive. It may be sufficient for Seaman Smith to tell Petty Officer Johnson that she found his comments offensive, that they are inappropriate, and tell him to change his behavior. When speaking to Seaman Smith, Petty Officer Johnson should listen to her to understand why she was offended. He should then apologize.

Appendix L

SEXUAL HARASSMENT FLEET CASE STUDIES

Enclosed are 12 case studies which deal with various situations related to sexual harassment. These case studies are based on actual incidents in the Navy. Identifying information has been deleted or altered to protect the privacy of the individuals involved. These case studies are not intended as blueprints for command reaction to actual allegations of sexual harassment or related issues; rather, they are intended to stimulate discussion and thought. Although discussion points are provided, it is recognized that reasonable minds may very well reach different conclusions. Like all situations involving human interaction, sexual harassment cases must be resolved based on the evidence available and the judgment of the command.

The following Fleet Case Studies are provided:

<u>Number</u>	<u>Page</u>
Fleet Case Study 1	L-2
Fleet Case Study 2	L-4
Fleet Case Study 3	L-5
Fleet Case Study 4	L-7
Fleet Case Study 5	L-9
Fleet Case Study 6	L-10
Fleet Case Study 7	L-11
Fleet Case Study 8	L-13
Fleet Case Study 9	L-14
Fleet Case Study 10	L-15
Fleet Case Study 11	L-16
Fleet Case Study 12	L-18

FLEET CASE STUDY 1

A female E-4 was taunted by a male E-3 outside a base club (both were in civilian clothes). The two were from different commands and did not know each other. The male wore a T-shirt with his ship's name on the front, and two of his shipmates saw the incident. The E-3 followed the E-4 down the sidewalk, yelling sexually explicit suggestions at her as she continued walking, then grabbed her by the arm and touched her breast and crotch. One of the E-3's shipmates then called him by his last name and told him to leave the woman alone. The woman reported the incident to her CDO immediately afterwards and gave the CDO the E-3's last name and ship. The E-3's CO investigated the incident and ordered NJP for the E-3.

Questions. Is showing an interest in the opposite sex sexual harassment? At what point did the E-3's behavior become inappropriate? Was the E-4 obliged to identify herself as a Petty Officer? Was the E-4 required to respond to the explicit sexual taunts and suggestions by confronting the E-3? Is "Hey, babe!" a sexual taunt? Does it depend on the circumstances? When does a comment that can be interpreted sexually become a sexual taunt? Does it make any difference that the E-3 and E-4 were from separate commands? Does it make any difference that the E-3 was unaware that the E-4 was a Petty Officer?

Discussion

Showing an interest in a person of the opposite sex can be perfectly acceptable provided that the recipient does not find it offensive or unwelcome. Assess these situations using the reasonable person standard. For "tamer" conduct where reasonable views of offensiveness/unwelcomeness could differ, it might not be sexual harassment unless a person continues in a course of conduct after notification of unwelcomeness. On the other hand, as to certain conduct no reasonable person should fail to appreciate that all recipients will probably be offended: in such cases even one incident can constitute sexual harassment. Thus a single instance of "Hey, babe!" is unlikely to constitute sexual harassment. (But just because it's not sexual harassment, doesn't necessarily mean it's OK: Is this an appropriate way to talk in a professional environment? Or what if the "babe" is the CO?) But there is no "one-free-bite" dispensation to hurl a flurry of graphically explicit sexual comments at a complete stranger, nor is there any need for the recipient to object to conduct wholly outside any reasonable bounds of propriety.

The E-3's behavior was inappropriate from the moment his interest in the E-4 degenerated into taunts and sexually explicit suggestions yelled out as he pursued her down the sidewalk. His language under these circumstances was, if proven, a violation (under Art. 92, UCMJ) of the lawful general order in SECNAVINST 5300.26B prohibiting deliberate or repeated unwelcome verbal comments of a sexual nature. (Such conduct would also violate Art. 134, UCMJ (Indecent Language) but adding this is probably

overkill.) The E-4's status as a Petty Officer is irrelevant here (nor would it matter if she were a civilian).

By touching the breast and crotch of the E-4, the E-3's conduct became unquestionably Red Zone aggravated sexual harassment which, if substantiated, must result in mandatory administrative processing. The physical contact in this case might also be charged as a violation of Article 134, Indecent Assault (which carries a greater maximum punishment than a violation under Art. 92).

The E-4 correctly responded by reporting the incident to her chain of command. (Use of the IRS is not indicated under these circumstances.) Her command took appropriate action by reporting the incident to the E-3's CO. The E-3's command is required to investigate the incident fully, and if it is substantiated by the E-3's CO, the E-3 must be processed for administrative separation.

Query. What might the E-3's shipmates have done to help prevent this situation? (And if they were unable to prevent it, did they have any other obligations? See NAVREGS 1137.) What can the command(s) do to create an atmosphere where such behavior would be less likely to occur?

FLEET CASE STUDY 2

A male Chief Petty Officer jogged at noon every day. The building where he worked had shower facilities, and command personnel were allowed to enter and exit the building in PT gear through a side entrance. A female civilian GS-5 secretary worked in an office near the side entrance and was accustomed to seeing personnel enter and exit the building in their PT gear. The secretary was well-liked in the command and personnel sometimes stopped to chat with her at her desk. For several days in a row the Chief, who worked in a different department, stopped briefly at the secretary's desk after his run to talk with her. He never asked her for a date nor made any sexually suggestive remarks. However, each time he would seemingly unknowingly expose himself to the secretary by innocently propping his leg up on the chair next to her desk. The secretary was too embarrassed to say anything to the Chief.

Questions. When does "innocent" behavior lose its innocence? If the Chief is unaware that he is exposing himself, how will he become aware that his behavior is inappropriate? If the secretary is too embarrassed to say something to the Chief, what should she do?

Discussion

The key to this situation is professionalism and communication.

Sitting around Government office spaces during working hours in gym gear is where this problem starts, and fixing that would solve more than just a sexual harassment complaint. Physical fitness is important in the Navy, but a command's offices are not a gym. A Chief Petty Officer should not have to be reminded that gym clothes are not the working uniform and that latitude to work out over lunch does not include turning the office into a lounge.

The secretary can improve both her productivity and the Chief's by promptly addressing the issue. Use of the IRS could well be the answer here. The secretary could try to resolve the conflict directly with the Chief—which might be done by simply asking the Chief not to prop his leg on the chair. If the secretary is too embarrassed to confront the Chief, she could enlist the help of some third party or her supervisor.

"Negligent" indecent exposure is not a violation of the UCMJ. The question is, how do you differentiate between unintended behavior and that which is intentional. Clearly, if the Chief persists after having been made aware that he is exposing himself, his conduct would be chargeable under SECNAVINST 5300.26B as sexual harassment (deliberate, unwelcome conduct of a sexual nature) and/or as willful indecent exposure under Article 134, UCMJ.

Query. Was no superior in a position to observe the Chief's behavior and address it on his/her own initiative?

FLEET CASE STUDY 3

A female E-4 had been counseled on two occasions by her Leading Chief, a male, for marginal performance of her duties aboard a Navy ship. Immediately following the second counseling session, the woman alleged to her division officer that the Leading Chief had made inappropriate sexual comments to her during that session, that the Chief had repeatedly asked her for dates, and that her performance was not marginal and the Chief was marking her down for refusing to date him. There were no witnesses. The Chief denied all the allegations. The E-4, incidentally, had been transferred from another division eleven months earlier after alleging sexual harassment by a male E-6. That allegation could not be substantiated, but the command had transferred the E-4 her request to remove any possibility of coercion or reprisal.

Questions. What should the division officer and the command do? What if the complaint cannot be substantiated? Should the Chief change his behavior? Should the E-4 change her behavior?

Discussion

It would be a clear violation of SECNAVINST 5300.26B for a supervisor to base performance marks upon a subordinate's refusing (or agreeing) to a date (classic Red Zone). It would also be a clear violation to threaten or take adverse action against a person, or to withhold favorable action, solely as a reprisal against a person who provides information on an incident of alleged sexual harassment.

On the other hand, a knowingly false complaint of sexual harassment made to hide poor performance or in order to manipulate the command would be just as much a violation of SECNAVINST 5300.26B. Note, however, that it is not a violation to make a complaint in good faith. Thus even if the sexual harassment complaint should later prove to be without merit, there would still be no violation unless it can also be established that the Third Class knew her allegation was false when made.

Every complaint of sexual harassment must be fully investigated. That obligation is incumbent on the command regardless of previous inability to substantiate a member's complaints.

Allegations of sexual harassment/reprisal are often difficult to substantiate because there often are no witnesses other than the parties themselves. If the Chief has engaged in inappropriate conduct with the E-4, it may be that he has done so with others, who can help provide corroboration. Similarly, if the E-4's performance is so marginal as to result in two counseling sessions, her problems will likely have been noted by other coworkers and supervisors. Corroboration, while highly desirable, need not be essential, and a CO/activity head (who has had the opportunity to view and gage the demeanor of the parties) may properly choose to believe one and not the other. On the other hand, some

factual controversies may simply prove to be unresolvable. Even so, the CO/activity head can still ensure that all involved clearly understand command/activity expectations and closely monitor the situation to preclude further problems.

It is crucial to document declining performance as it occurs. Trying to address previous poor performance retroactively after allegations of sexual harassment have already surfaced presents a real risk of appearing to be a reprisal.

While not appropriate in every case, in the future the Leading Chief might consider including intermediate supervisors or the division officer in his counseling sessions. That would serve three purposes: 1) it would involve more of the chain of command in trying to help the Third Class; 2) it would provide a second opinion to substantiate the low marks and help rebut the allegation that the marks are retribution for having rejected the Chief's advances; 3) it would help answer the allegation that the Chief uses counseling sessions to seek personal relationships with his subordinates.

FLEET CASE STUDY 4

A female ENS at a large shore command regularly encountered a male LT from another department in the passageway. On two occasions, the LT grabbed the ENS around the waist and pulled her close to him, although he did not say anything of a sexual nature. The ENS was upset and both times she told the LT conduct was offensive and not to touch her again. Nonetheless, the LT repeated the behavior a third time. The ENS became angry and threatened to "feed the LT her fist" if he touched her again. A LCDR overheard the exchange and reprimanded the ENS for being disrespectful to a senior officer.

Questions. Is this behavior appropriate? Is confronting the behavior right? Is the LT entitled to one "mistake"? What actions should each party take? What issues must the command address?

Discussion

The LT's behavior was inappropriate. That the ENS was not in the LT's direct chain of command has no bearing on the issue. Lack of verbal comments of a sexual nature is irrelevant—the behavior was of a sexual nature. The ENS's attempts to informally resolve the conflict directly with the LT on two prior occasions was entirely appropriate (although she was not required to wait until the "third strike" to inform her chain of command, and indeed, may have done so earlier).

In pursuing an informal resolution, a recipient should always try to allow enough time to collect thoughts and cool down, then proceed with common courtesy and ensure the approach is not disrespectful. Regardless of her anger, the ENS should attempt to deal with the situation professionally (perhaps later, in writing, which would have also helped document the situation). But is this realistic here? Under appropriate circumstances one is entitled to physically defend oneself from assaults, and a senior who departs from the conduct expected of his/her office may thereby forfeit the right to treatment as a superior in the event. Regardless, the ENS's threat is not the issue, but rather what brought it about.

The LCDR clearly missed the mark under the facts as we're privy to them, but what isn't clear is what perspective he had. Possibly his response might be understandable if he only heard the threat and nothing more. (But if he also heard the part about "if you touch me again," he should have looked more before leaping.) If the LCDR was aware of the physical contact aspects, he should have comprehended that he was quite possibly watching inappropriate conduct on the part of the LT. (Given these facts, it would appear pointless to first check with the ENS to see if she was offended.) Accordingly the LCDR should have acted to correct the LT's behavior.

The ENS, at this point, should immediately inform her chain of command. (It seems quite doubtful that an informal resolution remains viable!)

The command must, as a minimum, fully investigate the ENS' complaint.

Should the LT be given greater credibility because of his rank? No.

Should the ENS be given greater credibility because she is a woman making a complaint? No.

The Command must determine whether these facts and circumstances constitute aggravated sexual harassment requiring mandatory administrative processing. To do so, the CO must decide if there has been a substantiated incident involving physical contact of a sexual nature, which if charged as a violation of the UCMJ, could result in a punitive discharge. It is not necessary that the LT be found guilty at court-martial or non-judicial punishment (NJP), but an approved court-martial or NJP guilty finding would amount to such a determination.

If substantiated, the physical contact may be seen as an assault consummated by a battery under Article 128 of the UCMJ. A "battery" is any offensive touching, no matter how slight, without legal justification or excuse and without the lawful consent of the person affected. The command must determine whether the contact was "of a sexual nature" and whether there was any legal justification or excuse, or whether the contact had been consented to by the ENS, or whether the LT reasonably (even if mistakenly) believed the ENS would not object. The maximum punishment for an assault consummated by a battery includes a punitive discharge. Therefore, if the command determines that this was a substantiated incident, administrative processing of the LT would be mandatory. (Such action would be originated by BUPERS upon being apprised of the matter by the command. See MILPERSMAN 3410100.)

Similarly, if the LT were instead a civilian employee, upon substantiation that prohibited conduct occurred, the command would be obligated under OCPMINST 12713.2 AND OCPMINST 12752.1 to consider disciplinary and/or corrective action.

Query. What should the command do if the ENS' complaint cannot be substantiated because it is a case of the ENS' word against the LT's with no other evidence available to tip the balance? Should the ENS feel that the system has let her down if the complaint cannot be substantiated? What options are available to the parties/command to prevent an occurrence or recurrence of this conduct? (See Fleet Case Study 6.)

FLEET CASE STUDY 5

A female Air Traffic Controller alleged that a Navy pilot referred to her by an inappropriate term of endearment during a conversation over UHF. The CO of the pilot's squadron reviewed the UHF tape and found that the pilot had indeed referred to the ATC as "Honey."

Questions. Was this pilot being professional? Does using an informal means of address recognize the professional achievement of the subordinate? Would the pilot feel his authority diminished if his commands were acknowledged, "Sure, doll?"

Discussion

Professionalism is a two-way street. Every officer or civilian supervisor has the right to be addressed according to his or her rank and authority. Every subordinate has the right to be addressed in professional terms. Just as an officer would be justifiably offended by informal address, sloppy means of address to subordinates (civilian or military) degrades their hard earned professional status. This is much more a professionalism issue than a sexual harassment issue.

This conflict seems a good candidate for resolution under the IRS.

The pilot's behavior is Yellow Zone. If he persists calling the ATC "Honey" after notice of its offensiveness, the pilot will be in violation of SECNAVINST 5300.26B.

FLEET CASE STUDY 6

A female First Class alleged that her Leading Chief (male) made unwelcome advances toward her, including massaging her shoulders and buttocks and attempting to kiss her over her express objections and that the incident was witnessed by a male Third Class, also assigned to the department. The First Class reported the incident to her department head, who ordered an investigation. A female Second Class allegedly witnessed the Chief direct the Third Class to lie about the incident to command investigators. (The Chief allegedly said, "We have to stick together in this. These women are ruining everything!") During the investigation, all four parties stuck by their stories: the two males denied the incidents (sexual harassment incident and the CPO directing E-4 to lie), the First Class swore she had been harassed, and the Second Class swore she heard the Chief direct the Third Class to lie. (Oh, by the way, posters of NFL cheerleaders in scanty costumes and centerfolds from men's magazines were on the wall over the Chief's desk in the work space where the incidents allegedly occurred.)

Questions. What does the fact that such centerfolds and posters were hung in this command's office spaces say about the command's commitment to the Navy's sexual harassment policy? Would it be any different if this department had not included female sailors? What if the department head was a woman who had seen the centerfolds and didn't seem to mind? If both sides continue to stick to their stories, how is this complaint likely to be resolved?

Discussion

Sexually suggestive posters/centerfolds are out of place and inappropriate in any Navy office or working space, period. That a command would allow such materials to be displayed indicates a serious leadership failure.

Substantiation of sexual harassment complaints will, in some cases, come down to a credibility contest. Thorough investigation of every complaint is essential.

If the command determines that the Chief assaulted the First Class, the Chief must be processed for administrative separation.

When insufficient evidence is produced to substantiate a complaint, the command must nevertheless take corrective action to deal with the sexual harassment issue: in-depth counseling for both sides with appropriate warnings, and training for the entire unit if it appears that the word has not filtered down to all levels. (Also see discussion in Fleet Case Studies 4 and 11.)

Query. If the allegations are not substantiated because the evidence is evenly divided, should one or the other of the parties be given a different work assignment? Which one? (See discussion in Fleet Case Study 7.)

FLEET CASE STUDY 7

A non-rated female at a shore command alleged sexual harassment by four male superiors in her chain of command (one E-4, one E-5, one GS-7, one E-8). According to the E-2, the E-4 made sexually explicit suggestions to her in her work space. The E-5 allegedly overheard the comments and laughed, at one point saying, "I'd like to see that!" The GS-7 allegedly observed the incident but did not intervene. When the woman complained to him, he allegedly told her not to be so thin-skinned. When she complained to the E-8, he allegedly told her "That's what happens when you put good-looking women around a bunch of young, healthy, all-American men." The E-2 complained to her division officer and the command investigated the incidents, eventually disciplining all four men.

Questions : What does the Navy's sexual harassment policy require from the parties in this case? Who has an obligation to recognize sexual harassment? Who has a duty to prevent it? Who has a duty to act on a report or allegation of sexual harassment?

Discussion Points

A single sexually explicit remark (not involving an offer of rewards, or threats to one's career or job, in return for sexual favors) is not "aggravated" sexual harassment as defined in SECNAVINST 5300.26B. Therefore, although the E-4's behavior probably violates the instruction's ban on "unwelcome verbal comments of a sexual nature," it does not, of itself, require administrative separation processing.

Any military or civilian member in a supervisory or command position who uses, condones, or ignores sexual harassment of which he/she knows (or has reason to know) is also engaging in sexual harassment.

The E-8 who received the E-2's complaint but did nothing, and the GS-7 who observed the incident and heard the woman's complaint but told her not to be so thin skinned, both had an obligation to recognize sexual harassment, prevent it from occurring, and to investigate, or cause to be investigated, all reports of sexual harassment from their subordinates. The E-5 who laughed at the sexual comments and added, "I'd like to see that!," not only violated his supervisory responsibilities, but also became a participant in the actual harassment.

Lesser forms of sexual harassment not defined as "aggravated" incidents, may, nonetheless, result in administrative action including counseling, page 13 entries, letters of instruction, non-punitive letters, remarks in evaluations and fitness reports, as well as NJP or court-martial depending on the severity of the offense. While a single incident of sexual harassment of this type would not require administrative processing, one such incident could result in administrative processing for Commission of a Serious Offense, if

the criteria under the MILPERSMAN were met. Similarly, repeated minor incidents could result in processing for a Pattern of Misconduct, under MILPERSMAN guidelines.

Integrating all the players back into a productive work environment following the disciplinary actions will be a major challenge. The command must closely monitor the situation to absolutely ensure that the E-2 is not subjected to subsequent reprisals. The command must also ensure that the E-2 is not "re-victimized" by protective measures. If continued association of the E-2 with the others in the same work environment is not tenable, and she does not desire a change, the command may well have to move the others.

This situation would have been a good candidate for resolution under the IRS. The E-2 could have attempted an informal resolution directly with the E-4 or sought the informal assistance of a 3rd party or a supervisor. All of the supervisors who observed or learned of the offending behavior were required to take action, which could have included exploring the viability of an IRS resolution. If the IRS had produced a resolution satisfactory to the E-2, many if not all the disciplinary actions could have been avoided.

FLEET CASE STUDY 8

A large CONUS shore command with a significant number of women members (officer, enlisted, civilian) frequently hosted visiting flag officers who briefed members of the command on mission functions. At every briefing, the introduction was the same: "Gentlemen, Admiral ____." The command also requires phones to be answered with: "May I help you, Sir?"

Question. What message do members of the command, male and female, receive about the value of women's contributions or their importance to the team?

Discussion Points

Omission of any group within a command when addressing or recognizing the command lessens unit cohesion and teamwork. Members who are not accorded the same recognition and respect as other personnel are discouraged from doing their best for the team. A commanding officer who publicly praises his or her officers without acknowledging the contributions of enlisted and civilian members, for example, conveys the impression that only the officers are important to the command. These may seem like insignificant issues, but they are not insignificant to those people who feel excluded or undervalued. Seemingly small cosmetic insensitivities can have a significant impact on unit morale and, ultimately, performance and mission effectiveness.

FLEET CASE STUDY 9

A Navy club hosts weekly lunchtime entertainment that usually consists of go-go dancers in skimpy costumes. Waitresses at the club are required to wear extremely short black skirts, low-cut white blouses, black stockings and high heels. The printed menu of drinks includes several which have sexually suggestive or explicit names. The club manager has received numerous complaints from women patrons and from waitresses who allege that the men frequenting the club often make lewd comments to them associated with the suggestively named drinks. (There were also complaints that the club's name itself was demeaning to women.) The club's patrons are overwhelmingly male, and the club manager is trying to attract clients so the club will not have to be closed down because it cannot pay its own way. Several civilian clubs with even more suggestive entertainment operate just outside the gate.

Questions. If "sex sells" is a universally recognized advertising and marketing maxim, why not let the club do whatever it wants? Whose club is this, anyway? If women patrons are offended, why don't they just avoid going to the club?

Discussion Points

Navy MWR activities, including Navy clubs, have a responsibility to conform to Department of the Navy policy. The clubs are for the benefit of all Navy members, not just the male segment of our population. The Navy's sexual harassment policy extends to all DON military and civilian personnel. Any verbal or physical conduct of a sexual nature that creates an intimidating, hostile, or offensive environment for any member or employee violates Navy sexual harassment policy.

Note that the persons offended by the conduct in this case are not just other patrons, but also the club employees who are subjected to such conduct at their "job-site" on a daily basis.

But the patrons are also entitled to consideration. Per paragraph 13 of (enclosure 2) of SECNAVINST 5300.26B, DON prohibitions against sexual harassment extend throughout the military working environment, including anywhere on-base, and during any command-sponsored social, recreational, and sporting events (regardless of location).

Also see discussion in Fleet Case Study 10.

FLEET CASE STUDY 10

A command had a tradition of quarterly Friday night "happy hour" parties for officers. Officers were not officially required to attend, but they knew they were expected to. The parties' location rotated among private dwellings, civilian establishments, and base clubs. Attire was uniform of the day. Spouses and non-active duty guests were not invited, but about 10% of the officers were women, so women were always present. Late in the evening at one party, three male officers, all intoxicated, climbed atop a table in the rec room of the civilian apartment complex where the party was being held, and simulated sex acts with a lifesized, anatomically correct female blow-up doll. They did not remove any clothing, and no one made any sexually suggestive remarks to the women officers present. Nonetheless, the women were offended. The CO and his guest, who was senior to the CO, observed the behavior, but took no action.

Questions Was this behavior appropriate? Did the timing and location of this scenario make any difference since the conduct occurred "off-duty" at a civilian apartment complex? Is sexual harassment the only issue presented?

Discussion Points

Sexual harassment, like other forms of misconduct, is facilitated by abuse of alcohol which inevitably leads to a loss of judgment. Alcohol abuse presents the greatest single opportunity for career-ending consequences of any commonly faced situation in the DON. Not only may alcohol abuse result in criminal charges for civilian and military offenses such as DUI or other alcohol related crimes, but alcohol abuse may also result in revocation of career-essential qualifications, such as security clearances, nuclear program qualifications, and PRP eligibility.

This was not a "private" party. The command's customary practice and "unwritten" expectations dictate treating such parties as if they were command-sponsored. DON sexual harassment prohibitions extend to any command-sponsored social event, regardless of location.

In any event, simulated sex acts with a blow-up doll while drunk, in uniform, in public, regardless of whether women officers or civilians were present, is an egregious departure from the conduct expected of personnel in the U.S. Navy. The CO and his senior guest who observed this activity (including the irresponsible use of alcohol) but did not intervene to stop it showed a marked absence of judgment, calling into question their fitness for command.

FLEET CASE STUDY 11

A female LCDR and a male GS-9 civilian employee in the woman's chain of command attended a week-long conference on official TAD orders at a civilian hotel. At dinner the evening before the conference began, the LCDR told the GS-9 she found him attractive and was interested in a personal as well as a professional relationship. The GS-9, who was engaged to be married, told the LCDR he was flattered, but was not interested. The officer persisted, saying she could make his work environment "much more comfortable." The GS-9 again declined. Upon returning to their command, the LCDR was cool but professional toward the GS-9 and never asked him to date her again. Two months later, when he received his annual evaluation, his performance marks had dropped from "Outstanding" to "Satisfactory." He had never been counseled on a decline in his performance and felt he was the victim of sexual harassment.

Questions. What should the GS-9 do regarding his supervisor's unwanted sexual advances? Did the LCDR do anything wrong by merely making an overture? At what point, if any, during the conversation did the LCDR go too far in trying to persuade the GS-9 to enter into a personal relationship? If the GS-9 immediately reports the LCDR's actions, but the LCDR denies she offered any rewards in return for sexual favors from the GS-9, is it likely that a report of this incident will result in a substantiated case of aggravated sexual harassment? If not, what is the point of making a report? Is it ever a good idea to have a personal relationship between a superior and a subordinate in the same chain of command?

Discussion Points

So long as a supervisor is willing to take "No" for an answer and carefully avoids any carry-over to the work environment, it is not sexual harassment for a supervisor to propose a personal relationship with a subordinate. Whether it is a good idea is an entirely different question (and between military members may constitute prohibited fraternization). At all times the supervisor must scrupulously avoid letting private interests influence official responsibilities.

The LCDR unquestionably crossed the line in offering a work-related reward ("a much more comfortable work environment") in return for sexual favors. If substantiated, this would constitute an incident of aggravated sexual harassment requiring mandatory administrative processing (in the case of an officer, originated by BUPERS upon notification by the command--see MILPERSMAN 3410100).

The GS-9 should report this behavior even if the conversation occurred in private and the chances are that the evidence will be only a case of word against word. The command involved should investigate the complaint, and substantiate it if possible. Investigation of a single complaint may result in discovery of a series of incidents which,

when taken together, may help substantiate the specific allegation. A report, if nothing else, will heighten the awareness of the command to the possibility of a problem.

Making a report may also help to assure that rejection of the advance does not become reflected in the subordinate's evaluation. Making a report to the chain of command, even if it is not later substantiated, may help rebut mysteriously lower evaluation marks that are not supported by a previously documented fall-off in a subordinate's performance.

Also see discussion in Fleet Case Study 3.

FLEET CASE STUDY 12

A female activity head habitually put her hand on the elbow, shoulder, or arm of subordinate personnel, men and women, supervisors and non-supervisors, when she discussed the activity's work with them. The activity head never made suggestive or inappropriate comments, but tended to stand close to her personnel when she talked to them. A female GS-4 reported to her immediate supervisor and division head, both males, that this behavior made her uncomfortable. She did not want to confront the activity head personally, and asked that her division head do so on her behalf.

Questions Is every touch "of a sexual nature?" If subordinates feel uncomfortable with a superior's actions, what should they do?

Discussion Points

This situation should be readily resolved informally. Not all contact is sexual in nature. However, everyone needs to be aware that personal actions can be misinterpreted, or make others uncomfortable. Some leaders try to use body contact as a means of emphasis to get a point across, or as a means of reassurance. Their touch is a way of saying, "You're on my team, now here's what I want you to do." This kind of contact, while not sexual in nature and not universally viewed as offensive, may lead to situations where a subordinate feels intimidated. The subordinate in this case was right to raise the issue with her division head, and the division head must ensure this concern gets conveyed to the activity head. Good leaders will recognize when their personal leadership styles are becoming counter-productive and will modify their actions accordingly.

Appendix M

GUIDELINES FOR THE COMMAND INVESTIGATING OFFICER (IO) of SEXUAL HARASSMENT COMPLAINTS

Attachments: (1) Summary of Key Concepts Relating to Sexual Harassment
(2) OCPM Schedule of Offenses and Recommended Remedies
(3) Charging Sexual Harassment Under the UCMJ

1. **Purposes of investigation.** Develop a written record; lay out the facts; draw a clear picture; memorialize witness statements; obtain and preserve other pertinent evidence; serve as decision-making tool; provide a reference point for justifying actions taken; foster trust in the resolution process by demonstrating command commitment and allowing affected personnel an opportunity to be heard; establish credibility and objectivity; provide a foundation for subsequent decisions by the CO/OIC/activity head; and protect morale and productivity.
2. **Nature of investigation.** Always neutral and impartial; primarily, a fact-finding quest to determine exactly what happened; secondarily, a search for solutions; generate opinions only after completion of fact-finding (communicate opinions only to appropriate command authority, never to witnesses or parties).
3. **Before starting, thoroughly familiarize yourself with--**
 - a. Guidance, instructions, and/or supplemental material provided by your command.
 - b. SECNAVINST 5300.26B (especially paragraph 8 and enclosures (1) and (2)).
 - c. The attachments to these guidelines (summarizing key concepts relating to sexual harassment and other inappropriate conduct which might surface during the investigation of a sexual harassment complaint).
 - d. You may also find it helpful to review the Informal Resolution System (IRS) skills booklet ("Resolving Conflict . . . Following the Light of Personal Behavior," NAVPERS 15620).
4. **Know what your objectives are.**
 - a. Review the specific allegations to identify the issues subject to investigation. Develop a plan to specifically address all apparent issues (and

consider developing a list of questions to pursue.) (Be prepared to adjust your plan as warranted by developments during the course of the investigation.) Be sure to comply with any specific command requirements. If you have any questions about how to proceed (whether before, during, or after the investigation), obtain clarification from the command.

b. Understanding the material in paragraph 3 above will help you formulate the necessary frame of reference to pursue your primary objective of collecting all evidence relevant to establishing the factual basis for determining whether inappropriate conduct did or did not occur and related information pertinent to making a proper disposition of the case. Items of interest include: the parties' currently assigned duties; evaluation of performance; attitudes and ability to get along with others; and particular personal difficulties or hardships which they are willing to discuss.

5. **Maintain confidentiality to the extent practicable.** Avoid identifying the persons involved except as may be necessary to obtain all necessary evidence. Do not discuss the nature or progress of your inquiry with anyone without a "need to know."

6. **Gather and preserve all relevant evidence.**

a. **Interview all persons who might possess relevant information.**

(1) Interview the person initiating the allegations first, then any known witnesses, then any other witnesses identified during these interviews.

(2) Next interview the offending person. Then interview any witnesses suggested by the offending person.

(3) Finally, re-interview as necessary.

(4) See paragraph 7 for guidelines for conducting interviews.

b. **Gather and preserve any documentary evidence.** Documentary evidence, such as letters, notes, counseling sheets, written or printed material, instructions, or watchbills, should be obtained and attached to the report. If unable to provide originals, explain why (and if possible attach copies).

c. **Gather and preserve any real evidence.** Real evidence is a physical object, such as a picture, greeting card, or token of affection. The IO may receive any such items voluntarily given by the witnesses and safeguard them until final disposition of the case. If the IO seeks to obtain any such evidence from an unwilling

person, he/she should seek advice from the judge advocate or other legal counsel advising the command.

7. **General principles for conducting interviews**

- a. Treat everyone with dignity and respect.
- b. Tell each interviewee who you are, what you are doing, and why you are talking to them.
- c. Maintain a reasonable tone of voice. Be careful not to use threatening mannerisms or body language.
- d. Listen. Keep an open mind. Do not filter. Try to understand each person's point of view.
 - Let each witness tell his/her story.
 - List points to ensure that you elicit all necessary information to specifically address each allegation.
 - Interrupt for clarification.
 - Interrupt or return later for details.
 - Use written questions or phone interviews for absent witnesses.
- e. Avoid re-victimizing recipients (or witnesses). Investigate the complaint, not the complainant. Apprise the command immediately if it appears that counseling support and/or referral services might be warranted.
- f. Accord any person suspected of having engaged in sexual harassment (or other illegal or inappropriate behavior) all applicable rights. Applicable rights for military personnel are summarized in paragraph 8.a below. Applicable rights for civilian employees are summarized in paragraph 8.b below.
- g. Take verbatim notes (as closely as possible). Alternatively, consider taping each interview. (Inform the interviewee of the taping prior to the interview--do NOT tape in secret.) Start the interview by stating on tape the date, time, and location, and have the interviewee acknowledge on tape that he/she understands the interview is being taped.
- h. Translate your notes (or the tape) into a typed statement. (DON Voluntary Statement Form (OPNAV 5527/2, SN 0107-LF-055-2710) may be used if available.) The IO may assist in helping the interviewee express him/herself accurately and effectively in a written form that is thorough, relevant, orderly, and clear, but the substance of the statement must always be the actual thoughts, knowledge, or beliefs of the interviewee. Have the interviewee read, correct (pen and ink is preferable), initial any corrections, sign the statement (and initial all pages other than the

signature page). The interviewee should sign in the presence of a witness (which can be you); the witness should also sign the statement (also legibly print or type the witness' name). (If the interviewee has additional information to provide, it may be provided in a supplementary statement.)

i. Oral statements, even though not reduced to writing, are also evidence. If an interviewee does not wish to reduce an oral statement to writing, the IO should note this in the report and attach a summary of the interview. Where the interviewee has made an incomplete written statement, the IO must add a summary of the matters made orally that were omitted from the written statement.

j. All statements should be sworn. Pursuant to JAGMAN 0902b(2)(d), military personnel detailed to conduct an investigation are authorized to administer oaths in connection therewith. This may be accomplished by asking the interviewee to raise his/her hand and asking, "Do you swear that the information provided in the statement is the truth to the best of your knowledge, so help you God?" (See JAGMAN 0908d.) This should be done both at the end of oral statements (on tape, if applicable) and when executing any subsequent written statements. For written statements, administer the oath verbally, then ensure the statement is completed as follows:

I swear (or affirm) that the information in the statement above
(and on the ___ attached pages, each bearing my initials) is the
truth to the best of my knowledge.

Interviewee's signature and date

Subscribed and sworn to before me at (location) on (date)
Investigating officer's signature

k. Before closing any interview--

(1) Summarize key information.

(2) Solicit any additional information the interviewee wishes to provide.

(3) Ask the interviewee to identify other witnesses.

(4) Ask the interviewee to identify and/or provide any pertinent documents or other evidence.

(5) Schedule a follow-up meeting, if required (e.g., to obtain additional information, signature on written statement, etc.).

(6) Discuss how the interviewee should advise of supplementary information he/she might obtain (or think of) later.

(7) Discuss the concept of reprisal (improper action against a person for providing information in the investigation) and ensure the interviewee knows how and to whom to report any suspected instances of reprisal.

(8) Ensure the interviewee has a number to contact you.

8. Rights advisement

a. Military personnel

(1) All forms of sexual harassment constitute violations of the UCMJ.

When a military member is suspected of having committed sexual harassment (or any other offense), the offending person may only be questioned after a) having been properly informed of all applicable rights and b) knowingly and intelligently waiving them. (Military suspects must be advised of their rights even if they are not in "custody.") The Suspect's Rights and Acknowledgment/Statement form (contained in JAGMAN A-1-m), when properly completed, may be used for this purpose. Other than advising the offending person of the rights as listed on the form, the IO should never give any other form of legal advice or promises to the offending person.

(2) If the offending person desires a lawyer, the IO should immediately terminate the interview and seek advice from the judge advocate or other legal counsel advising the command.

(3) After the offending person has properly waived all rights, the IO may begin questioning. After the offending person has made a statement, the IO may probe with pointed questions and ask the offending person about inconsistencies in the story or contradictions with other evidence. The IO should, with respect to his/her own conduct, keep in mind that the statement must be "voluntary." A confession or admission which was obtained through the use of coercion, unlawful influence, deception, or unlawful inducement is not voluntary. The advantage of having an impartial witness present will have to be balanced on a case-by-case basis against the likelihood that more people might inhibit the interviewee's willingness to be interviewed.

(4) If the offending person initially waives all rights, but during the interview indicates a desire to consult with counsel or to stop the interview, scrupulously adhere to such request and terminate the interview. The interview may not resume unless the offending person voluntarily approaches the IO and indicates a desire to once again waive all rights and submit to questioning.

b. Civilian employees

(1) The right to be informed of charges does not apply to an investigatory proceeding.

(2) There is no right to government-provided counsel (per "Miranda" rights) in an investigatory proceeding (except for custodial interrogations where the employee is not free to leave and has no resources to provide his/her own counsel-- such custodial interrogations should only be conducted by appropriate law enforcement personnel).

(3) There is a right to remain silent in an investigation only when there is a reasonable belief that statements taken will be used in criminal proceeding. An employee may be disciplined for not replying to questions raised in an agency investigation if the employee is adequately informed both that he/she is subject to discipline for not answering and that the replies will not be used against him/her in a criminal proceeding. In this regard, however, many forms of sexual harassment are also criminal violations. For example, the use of foul language may constitute "disorderly conduct" under local law. Unauthorized touching is a common law battery which can be prosecuted in criminal courts. New laws dealing with "stalking" may also apply to some sexual harassment cases. Where there is potential for criminal prosecution, simply telling the employee not to leave the room or escorting him/her to a confined area can result in a "custodial" interrogation triggering Miranda rights (see paragraph 8.b.(2) above). Accordingly, even though a criminal offense may seem relatively minor, the employee may still be justified in refusing to answer questions.

(4) Aggrieved employees have no statutory right to legal counsel, but only a right to representation. It is the employee's responsibility to secure legal counsel. The appellant/aggrieved is responsible for the actions of his/her representative.

(5) An employee who is a member of a bargaining unit represented by a union has a right to be represented by that union if the employee reasonably believes that the interview may result in disciplinary action against him/her and the employee requests such representation. This right does not apply to a supervisor (as defined by 5 U.S.C. § 7103(a)(10)), nor to a non-supervisor who is not a member of the bargaining unit.

(6) Prior coordination with the command's legal and/or labor relations advisors is essential.

9. When gathering the facts, as to each allegation find out--

- a. What exactly happened?

- b. What were the circumstances under which the behavior occurred?
- c. What was the stated intent behind the behavior? Apparent intent? What evidence supports this?
- d. Where did the behavior occur?
- e. Who was involved?
- f. Were there any witnesses?
- g. What was the impact on the recipient? How did the behavior affect the recipient or make the recipient feel?
- h. Did the conflict disrupt the work environment? How? Did it affect the recipient's work performance, or relationship with coworkers?
- i. Did the recipient discuss the situation with anyone at the time?
- j. Has objectionable conduct (either to this recipient or another) happened before? When? How many times?
- k. Was the offending person told to stop? If so, when? How? What was the reaction? Any witnesses?
- l. Was any of the foregoing documented? How? Is the documentation available? If not, why not? If so, attach documentation (or true copy) to report.
- m. What type of example was set by supervisors?
- n. Were supervisors aware of the offending behavior? Of the conflict? Should they have been? Why? Did they take action to resolve the conflict? What action? Were the persons involved satisfied with any such action? Did the action have any effect? What effect? Did the supervisor follow-up and provide feedback?
- o. Did all persons involved receive accession training in sexual harassment prevention? Yearly training? When? Was training documented? How? (Attach documentation (or true copies thereof) to report.)
- p. If reprisal appears to be an issue, are there also legitimate reasons which would justify the treatment of the person(s) who made the report of sexual harassment? What evidence supports these reasons? Were these reasons apparent and/or substantiated prior to the report of sexual harassment? Is there evidence that legitimate reasons were, or were not, the controlling factors for the treatment?

q. Are the persons involved prepared to try to listen, understand, and resolve the conflict? To apologize? To accept an apology?

r. What relief does the recipient desire? Will the recipient be completely satisfied with resolving the matter under the Informal Resolution System (IRS)? Does the recipient desire any further action? What are the recipient's feelings about the loss of confidentiality which may result in the event the command takes disciplinary action against the offender?

10. **When reviewing the facts and formulating your opinions, evaluate--**

a. What exactly happened? It is your role to evaluate agendas and credibility, sort fact from fiction, and draw a clear picture of what happened. (Have you completed all reasonable lines of inquiry or can you think of others which should also be pursued?)

b. How was the recipient treated compared with others? If the recipient has been treated differently, why? Does any independent evidence provide a legitimate basis for any different treatment. Even if there is such a basis, does an evidence suggest that the different treatment was in fact based upon an improper basis?

c. Would the behavior have offended a reasonable person with the victim's perspective? Would a reasonable person perceive the behavior in the same manner, given the circumstances that occurred?

d. Was the behavior zone Red, Yellow, or Green? What zone does the behavior fall into when considering whether it is unacceptable or acceptable?

e. What were the responsibilities of the persons involved? Were these responsibilities met? (You may find it helpful to review the Informal Resolution System (IRS) skills booklet.)

f. Even if a supervisor did not condone or ignore sexual harassment and did not know or have reason to know of the specific conduct in question, was the supervisor nonetheless derelict in failing to take reasonable measures to establish and maintain a policy against sexual harassment and to adequately educate and train subordinates? (Did all subordinates receive the mandatory accession training? Annual training? If not, was it the supervisor's fault? Why or why not?)

g. If the behavior does not constitute sexual harassment as defined in SECNAVINST 5300.26B, is it nonetheless inappropriate for some other reason? For example--

(1) Even if sexual conduct was not sexual harassment because the recipient welcomed it, was it--

- an ethics violation for use of public office for private gain, or making unauthorized "gifts" to superiors?
- bribery, graft?
- fraternization?
- adultery?
- sexual harassment of non-participating subordinates?

(2) Even if the conduct was not sexual harassment because it was not sexual, was it--

- maltreatment of subordinate?
- an ethics violation for use of public office for private gain, or making unauthorized "gifts" to superiors?
- fraternization?
- disrespect?

h. If it appears the allegation of sexual harassment was false, was it made honestly and in good faith, or did the person who made it know it was false when made? What's the evidence on this issue?

i. What are the possible resolution options? Are there any that would be acceptable to all? What option(s) do you recommend? Why? How will the recommended option(s) resolve the conflict?

11. Complete your report.

a. Comply with any specific requirements of your command.

b. In general, your report should usually contain the following--

(1) List of persons interviewed (if all desired interviews were not completed indicate who, why).

(2) Signed written statements of persons interviewed (preferably sworn). Also include your written summaries of any oral statements (see paragraph 7.i). Unless otherwise directed by your command, do not include your notes or tapes, but do retain them until the matter is resolved and your command advises you that retention is no longer necessary.)

(3) Completed suspect's rights acknowledgment forms (if applicable).

(4) Any other evidence.

(5) Your discussion including background, identification of all allegations, findings, opinions, recommendations, signature, and date. (Clearly address all allegations; identify opinions and recommendations as such.) (Where the offending person is a military member, a properly completed NAVPERS 1626/7, Report and Disposition of Offense(s), will usually be acceptable for this purpose.)

(6) Identify any related policies, practices, deficiencies, or other issues that may constitute or foster sexual harassment (or appear to) noted in the course of the investigation even though not specifically raised by the complaint.

GUIDELINES FOR THE COMMAND INVESTIGATING OFFICER (IO)
of
SEXUAL HARASSMENT COMPLAINTS

Attachment (1)

Summary of Key Concepts Relating to Sexual Harassment

[Here insert a copy of chapter 2 of the Commander's Handbook for Prevention of Sexual Harassment.]

**GUIDELINES FOR THE COMMAND INVESTIGATING OFFICER (IO)
of
SEXUAL HARASSMENT COMPLAINTS**

Attachment (2)

Schedule of Offenses and Recommended Remedies (Civilian Employees)

[Here insert a copy of appendix B to enclosure (1) of OCPMINST 12752.1 or appendix H to the Commander's Handbook for Prevention of Sexual Harassment.]

GUIDELINES FOR THE COMMAND INVESTIGATING OFFICER (IO)
of
SEXUAL HARASSMENT COMPLAINTS

Attachment (3)

Charging sexual harassment under the UCMJ

[Here insert a copy of appendix I to the Commander's Handbook for Prevention of Sexual Harassment.]